

Gilliard v Yonkers Racing Corp.
2026 NY Slip Op 32017(U)
May 11, 2026
Supreme Court, New York County
Docket Number: Index No. 158034/2022
Judge: Lisa S. Headley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY PART 17M

Justice

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GLEN GILLIARD,

Plaintiff,

- v -

YONKERS RACING CORPORATION, EMPIRE CITY CASINO AT YONKERS RACEWAY, MGM RESORTS INTERNATIONAL, MGM YONKERS, INC.

Defendant.

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INDEX NO. 158034/2022
MOTION DATE 09/26/2025
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65,66, 67, 68, 69, 70, 71, 72

were read on this motion to/for

JUDGMENT - SUMMARY

Before this Court are Defendants MGM Yonkers, Inc., Yonkers Racing Corporation, Empire City Casino at Yonkers Raceway, and MGM Resorts International, (collectively referred to as "Defendants") motion for summary judgment pursuant to CPLR 3212 against Plaintiff Glen Gilliard ("Plaintiff"). Plaintiff filed opposition and Defendants filed a reply.

Background

This incident stems from an alleged slip and fall which occurred when Plaintiff used a bathroom located on the first floor of Empire City Casino. Plaintiff alleges that when he entered the subject bathroom, he observed a guy that was mopping the subject bathroom near the entrance door. Plaintiff declares he went to use the first stall to the right and as soon as he walked in there, the whole stall area was wet. Plaintiff claimed he fell as soon as he stepped into the stall. After falling into the subject bathroom stall- two individuals unknown to Plaintiff left the restroom to locate security, who ultimately requested medical assistance for Plaintiff.

Defendants' Motion for Summary Judgment

In support of their instant motion, Defendants argue, inter alia, that summary judgment is warranted because Defendants lacked actual and constructive notice of the alleged defective condition since Defendants inspected the area where Plaintiff allegedly slipped and fell within a reasonable amount of time to establish a matter of law that they lacked actual or constructive notice of the alleged condition. Specifically, Defendant Empire City Casino housekeeper Stephen Degabriel ("Mr. Degabriel") was assigned to the subject bathroom on the date and at the time of

Plaintiff's alleged incident, thereafter Mr. Degabriel is seen entering his assigned bathroom, at approximately 6:32p.m., nine minutes before the Plaintiff is seen entering. Based upon the foregoing precedent and the recorded evidence, Defendants submit that they inspected the subject bathroom within a reasonable amount of time before Plaintiff's alleged incident, and thereby Defendants establish that they lacked actual or constructive notice of the condition alleged by the Plaintiff.

Additionally, Defendants assert there is no evidence that Empire City Casino created the alleged hazard since the affirmation of Richard Hernandez ("Mr. Hernandez") Senior Manager of the Environmental Services Department at Empire City Casino states that any mopping performed by a housekeeper inside of a bathroom stall is fully dried before the stall is re-opened to patrons, and it is the custom and practice of housekeepers on duty in a specific bathroom to inspect the floor for any debris or liquid, and if same is observed within a stall, to close the stall, clean the potential hazard, and only re-open the bathroom stalls once the floor is fully dry.

Accordingly, Defendants respectfully submit that despite Plaintiff's testimony to the contrary, the evidence establishes that Mr. Degabriel was not mopping the entrance/exit area of the subject bathroom, and therefore there is no credible evidence that Defendants created the alleged slippery condition. Therefore, Defendants request that this Court grant their motion for summary judgment, dismissing Plaintiff's complaint.

Plaintiff's Opposition

In opposition, Plaintiff asserts that Defendants failed entirely to present evidence establishing when the bathroom stall was last inspected prior to Plaintiff's fall. No housekeeper affidavit was submitted, no testimony from the employee mopping the floor was produced, yet the only testimony comes from a peace officer who is not responsible for cleaning, who has no knowledge of cleaning procedures, and was dispatched after the incident along with an affidavit from Mr. Hernandez who only testified as to the general cleaning practices. Defendants highlight timestamps in the video footage which demonstrates that Plaintiff went into the bathroom, as well as the housekeeper assigned to the floor, yet the footage cannot establish whether the bathroom was closed for cleaning or whether the employee placed warning signs inside the bathroom.

Additionally, the footage shows that the bathroom was not closed and open to transient guests and further that the housekeeper did in fact cause the dangerous condition. Plaintiff argues Defendants' motion fails because it relies on testimony from an employee who is neither responsible for bathroom cleaning nor knowledgeable about who was assigned to clean the bathroom on the date of the accident. Mr. Hernandez whose duties are administrative in nature, testified only that he maintains documentation and trains staff, including housekeepers. He did not state that he personally cleans bathrooms, nor did he testify to cleaning or inspecting the first-floor bathroom on the day of the incident. His testimony describes general practices but offers no

evidence of what occurred on September 19, 2021. Therefore, Plaintiff requests that this Court denies Defendants' motion for summary judgment because Plaintiff has raised a triable issue of fact, and Defendants have failed to meet their prima facie burden for summary judgment.

Defendants' Reply

In reply, Defendants argue they have carried their initial burden to demonstrate that they did not create the alleged hazard, and Plaintiff's opposition fails to dispute that conclusion because MGM witness testimony and the surveillance footage demonstrate that Defendants did not create the alleged hazard. Furthermore, Plaintiff's reliance upon Michael Marrano ("Officer Marrano"), the Empire City Peace Officer who responded to Plaintiff's incident which establishes that Defendants created the alleged dangerous hazard is without merit, and Plaintiff has failed to provide credible evidence that Defendants had actual or constructive notice of the alleged hazard. Therefore, Defendants request that this Court grant their motion for summary judgment.

Decision

"[T]he proponent of a summary judgment motion must make 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. Failure to make such *prima facie* showing requires denial of the motion, regardless of the sufficiency of the opposing papers." *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Under *CPLR §3212*, "[o]n a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. *See, CPLR §3212*. "Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action." *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 (2012) [internal citations and quotation marks omitted].

After oral argument held on April 14, 2026, and upon the affidavits, arguments and evidence submitted, this Court finds that summary judgment must be denied because the Defendants have failed to demonstrate that there are no material issues of fact. Specifically, this Court finds the affidavits submitted by Defendants fail to dispel triable issues of fact that any mopping performed by a housekeeper inside of a bathroom stall was fully dried before the stall was re-opened before Plaintiff entered the subject bathroom. Additionally, the argument regarding the custom and practice of housekeepers on duty in a specific bathroom to inspect the floor for any debris or liquid, and if same is observed within a stall, to close the subject bathroom/stall, clean the potential hazard, and only re-open the bathroom stalls once the floor is fully dry was not substantiated by an affidavit of housekeeper Stephen Degabriel who was the housekeeper responsible for the subject bathroom on the date of the incident.

Therefore, the defendant's motion for summary judgment must be denied.

Accordingly, it is hereby

ORDERED that the Defendants MGM Yonkers, INC., Yonkers Racing Corporation, Empire City Casino at Yonkers Raceway, and MGM Resorts International, (collectively referred to as "Defendants") motion for summary judgment is DENIED; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, the movant- Defendants shall serve a copy of this decision/order upon the plaintiff with notice of entry.

This constitutes the Decision and Order of the Court.

**HON. LISA S. HEADLEY
J.S.C.**

Lisa S. Headley

LISA S. HEADLEY, J.S.C.

5/11/2026

DATE

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