[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____ **PART** _____

Justice

Index Number : 114517/2009
ROSARIO, ELENA
VS.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____ **, were read on this motion to/for** _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

RECEIVED
MAY 30 2012
MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

FILED
MAY 31 2012
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S): _____

Dated: 5/25/12

_____, **J.S.C.**

1. **CHECK ONE:** ..... ☒ **CASE DISPOSED** ☐ **NON-FINAL DISPOSITION**
2. **CHECK AS APPROPRIATE:** .....**MOTION IS:** ☐ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**
3. **CHECK IF APPROPRIATE:** ..... ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER**
☐ **DO NOT POST** ☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

----------x

ELENA ROSARIO,

Plaintiff,

Index No. 114517/09

-against-

DECISION/ORDER

THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

----------x

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	
Cross-Motion and Affidavits Annexed	2
Answering Affidavits to Cross-Motion	3
Replying Affidavits	4
Exhibits	5

Plaintiff commenced the instant action to recover damages for personal injuries she allegedly sustained when she slipped and fell on debris and liquid on an interior staircase in an apartment building located at 514 West 134th Street, New York, New York on October 15, 2008. Defendant New York City Housing Authority ("NYCHA") now moves for an order pursuant to CPLR §3212 granting it summary judgment on the grounds that it did not cause and create the condition and it did not have notice of the condition. For the reasons set forth below, NYCHA's motion for summary judgment is granted.

The relevant facts are as follows. On January 12, 2009, plaintiff allegedly slipped and fell

while she was descending an interior staircase in an apartment building located at 514 West 134th Street, New York, New York (the "building"), part of the NYCHA-owned Manhattanville Houses. Plaintiff alleges that on the day of her accident, she was working for Priority Home Care as a home attendant caring for Nilva Olan, a tenant in the building. Plaintiff's usual work hours with Ms. Olan were from 9:00 a.m. until 3:00 p.m, Monday through Saturday. On the date of the accident, plaintiff reported for work at Ms. Olan's apartment, Apt. 4C, on the 4th Floor at 9:00 a.m. She alleges she got to the apartment by walking up to the fourth floor after she was buzzed into the building by Ms. Olan. The stairway that she ascended to get to Ms. Olan's apartment was the same stairway that she used six days a week and the same stairway that she used to descend from Ms. Olan's apartment on the day she was injured. It is undisputed that it is the main staircase in the building.

Plaintiff alleges that when she entered the building at 9:00 a.m. on the date of the accident, she did not see any liquid or debris on the stairway and that she did not have any problem ascending the stairs to get to Ms. Olan's apartment. Further, plaintiff described the weather on the date of her accident as "normal" and she did not remember exactly when it had last snowed but that it hadn't snowed or rained that day. She alleged that there was some snow on the ground outside at the time of her accident but that the snow was not deep.

On the date of the accident, at approximately 11:00 a.m., plaintiff alleges that she and Ms. Olan left Ms. Olan's apartment to go to Ms. Olan's foot doctor appointment. Plaintiff descended the stairway first and was followed by Ms. Olan. Plaintiff and Ms. Olan descended the staircase from the fourth floor to the second floor without any problem. As plaintiff was descending from the landing between the second and first floors, she alleges that she stepped down with her right

foot onto the lowest step and slipped and fell. Plaintiff alleges that when she got up from the floor, she noticed that her pants were "wet with something sticky, greasy or sticky." She said that she then saw wet foot prints on the floor of the lobby and that she was able to see bags of candy, liquid and grease on the stairway where she fell. Plaintiff testified that she did not see these items when she ascended the stairway at 9:00 a.m. earlier that day.

Plaintiff further alleges that she did not see anyone that she believed to be employed by NYCHA on the date of her accident and she had no contact with anyone from NYCHA on the date of her accident. She alleges that she never discussed her accident or the condition of the stairway with anyone from NYCHA and never complained to a NYCHA employee about the condition of the stairway prior to her accident. When plaintiff returned from Ms. Olan's foot doctor appointment a few hours later, she and Ms. Olan ascended the same stairway that she had fallen on earlier and both the lobby and the stairway had been cleaned between then and the time of her accident.

A defendant who moves for summary judgment in a slip and fall case has the initial burden of making a *prima facie* showing that it did not cause the condition and that it did not have actual or constructive notice of the condition. *See Branham v. Loews Orpheum Cinemas*, 31 A.D.3d 319 (1st Dept 2006). "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." *Gordon v American Museum of Natural History*, 67 N.Y.2d 836, 837-838 (1986). Further, "when a landowner has actual knowledge of the tendency of a particular dangerous condition to reoccur, he is charged with constructive notice of each specific reoccurrence of that condition." *Weisenthal v Pickman*, 153 A.D.2d 849,

851 (2d Dept 1989). However, a "general awareness" is insufficient to constitute constructive notice. *See Gordon*, 67 N.Y.2d at 837-838. Plaintiff is "required to show by specific factual references that the defendant had knowledge of the allegedly recurring condition." *Stone v Long Is. Jewish Med. Ctr.*, 302 A.D.2d 376, 377 (2d Dept 2003). Moreover, "a prima facie case of negligence must be based on something more than conjecture; mere speculation regarding causation is inadequate to sustain the cause of action. Conclusory allegations unsupported by evidence are insufficient to establish the requisite notice for imposition of liability." *See Mandel v 370 Lexington Ave., LLC*, 32 A.D.3d 302, 303 (1st Dept 2006).

In the instant action, NYCHA has established its prima facie right to summary judgment on the grounds that it did not cause the condition on which plaintiff slipped and fell and that it did not have actual or constructive notice of the condition on which plaintiff slipped and fell. Emerito Mendez, a janitorial Caretaker employed by NYCHA, testified that he was employed as the janitorial Caretaker of the building on the date of plaintiff's accident. Additionally, Caroline Soriano, Supervisor of Caretakers in the Manhattanville Houses for over eight years, provided the work schedule for the building and affirmed that Mr. Mendez performed his usual cleaning functions on the date of plaintiff's accident. Mr. Mendez testified that his usual routine was to sweep and spot mop the lobby area as well as the stairways and hallways of the building on a daily basis between 10:15 a.m. and 10:50 a.m. and that he would spot mop at other times of the day whenever he noticed liquids or debris on the floor of the building or on the stairways. Mr. Mendez further testified that he did not place the items on which plaintiff slipped and fell on the stairway. He also testified that he had no personal knowledge of plaintiff's accident and only learned of the accident in conjunction with the lawsuit. Mr. Mendez further testified that the

only complaints he received from tenants in the building were, on occasion, when items of furniture were left in the hallway or on the floors of the building. Additionally, Ms. Soriano affirmed that she did not receive any tenant complaints prior to January 12, 2009 regarding janitorial conditions in the building. Moreover, Mr. Mendez noted that there generally was not much debris on the stairway on which plaintiff fell but that the debris situation was worse on the sixth floor stairway leading to the roof where kids who lived in the building would sometimes congregate. Mr. Mendez testified that he had reported the tenant teenager situation that was occurring on the roof to his employer and a notice was sent out to the tenants regarding such conduct.

In response, plaintiff has failed to raise an issue of fact as to whether NYCHA caused the condition or whether NYCHA had actual or constructive notice of the condition. As an initial matter, plaintiff has offered no evidence establishing that NYCHA caused the condition as she has not alleged or shown that NYCHA employees deposited the garbage or liquid on the stairs. Further, plaintiff's assertion that NYCHA caused the condition by failing to place mats in the lobby on the date of plaintiff's accident is without merit. Mr. Mendez testified that if it had rained a lot or was snowing, a rubber mat would be placed along the length of the lobby of the building from the second door leading from the foyer up to the beginning of the stairway. It is undisputed that on the day of plaintiff's accident, it was neither snowing nor raining and it had not snowed or rained for at least 24 hours before plaintiff's accident. Moreover, plaintiff has made no allegation that she slipped and fell on snow or water brought in from the outside but rather that she slipped and fell on a greasy, sticky substance and debris including bags of candy. Even if NYCHA was negligent for not placing mats in the lobby on the day of plaintiff's

accident, which it was not, plaintiff's accident was not due to such negligence as placing mats in the lobby would not have prevented the grease, sticky liquid and garbage from being on the stairway on which she fell. Moreover, it is well-settled that a defendant is "not required to cover all of its floors with mats, nor continuously mop up all moisture resulting from tracked-in melting snow." *Kovelsky v. The City University of New* York, 221 A.D.2d 234 (1st Dept 1995) *citing to Miller v. Gimble Bros.*, 262 N.Y. 107 (1933).

Additionally, plaintiff has failed to raise an issue of fact as to whether NYCHA had actual or constructive notice of the condition. Plaintiff testified that she did not complain to anyone prior to her accident about the condition of the particular stairway on which she fell nor has she presented any evidence that defendant was aware of the specific condition on the stairs which allegedly caused her to fall. Plaintiff's testimony that Ms. Olan had complained to the super about the janitorial conditions in the building on prior occasions is insufficient to constitute actual notice of the specific condition on which plaintiff fell. The First Department has held that "[e]vidence of a general awareness of debris and spills in the stairway does not require a finding that defendant is deemed to have notice of the condition that caused plaintiff to fall." *See Torres v. New York City Hous. Auth.*, 85 A.D.3d 469 (1st Dept 2011). Plaintiff has failed to raise a factual issue as to whether NYCHA knew about the specific condition on the stairway on which she fell and failed to remedy it prior to her accident.

Moreover, in order to establish constructive notice of an alleged defect, the alleged defect must (1) be visible and apparent and, (2) exist for a sufficient length of time prior to the accident to permit (a) discovery of the defect and (b) time to remedy the defect. *See Gordon*, 67 N.Y.2d at 837-38. As an initial matter, plaintiff has failed to raise an issue of fact as to whether the

condition was visible and apparent. Plaintiff's own testimony demonstrates that she did not even see the debris or sticky, wet substance on the stairway prior to her fall. Further, plaintiff has failed to raise an issue of fact as to whether the condition on the stairway existed for a sufficient length of time prior to her accident to allow NYCHA to discover the condition and allow for time to remedy the condition. According to plaintiff's own testimony, there was only a two hour period between the time plaintiff ascended the stairway at 9:00 a.m., when plaintiff alleges the stairway was clear of debris and liquid, and the time plaintiff descended the stairway at 11:00 am. when she slipped and fell on the condition. Plaintiff has not put forth any evidence disputing the fact that the stairway was cleaned sometime between 10:15 a.m. and 10:50 a.m. on the day of her accident. Thus, the debris and liquid on which plaintiff slipped and fell could have been deposited there only minutes or seconds before plaintiff's accident. Any finding as to when the debris and liquid came to be placed on the stairway would be based solely on speculation which is not enough to support an allegation of constructive notice. *See Penny v. Pembrook Mgmt.*, 280 A.D.2d 590 (2d Dept 2001)(holding that because injured plaintiff testified that she did not see patch of ice in parking lot anytime before her accident, any finding as to when the ice patch developed is pure speculation, and thus insufficient to support allegation of constructive notice of the ice patch); *see also Gordon*, 67 N.Y.2d at 838.

Although plaintiff asserts that she always saw garbage in the stairway of the building, constructive notice cannot be imputed to NYCHA on that basis. The Court of Appeals has held that

> neither general awareness that litter or some other dangerous condition may be present (citation omitted), nor the fact that plaintiff observed other papers on another portion of the steps approximately

> 10 minutes before his fall is legally sufficient to charge defendant with constructive notice of the paper he fell on.

Gordon, 67 N.Y.2d at 838. Rather, a "plaintiff must show that the defendant had knowledge of the particular dangerous condition that is 'qualitatively different' from a mere 'general awareness' that a dangerous condition may be present." *Gonzalez v. Wal-Mart Stores, Inc.*, 299 Fed.Supp.2d 188 (S.D.N.Y. 2004). Thus, NYCHA's motion for summary judgment on the grounds that it did not cause the condition on which plaintiff slipped and fell and it did not have actual or constructive notice of the condition on which plaintiff slipped and fell is granted.

Accordingly, NYCHA's motion for summary judgment dismissing plaintiff's complaint is granted. The Clerk is directed to enter judgment in favor of NYCHA and against plaintiff. This constitutes the decision and order of the court.

Dated: 5/25/12

Enter: _____
J.S.C.