| **Bohl v Culligan Intl. Co.** |
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| 2006 NY Slip Op 30747(U) |
| December 20, 2006 |
| Supreme Court, New York County |
| Docket Number: 103145/2005 |
| Judge: Rosalyn Richter |
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[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 24

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BOB BOHL and MARIE BOHL,

Plaintiffs,

-against-

DECISION & ORDER
Index No. 103145/2005
Motion Seq. 1

CULLIGAN INTERNATIONAL COMPANY and CULLIGAN WATER COMPANY OF NEW YORK, INC.,

Defendants.

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**RICHTER, J.:**

On May 11, 2003, plaintiff Bob Bohl, an employee of Crain Communications ("Crain"), was walking in the Crain office when he allegedly slipped on water leaking from the refrigerator and sustained injuries due to the fall. On February 23, April 23 and May 2, 2003, defendant Culligan made repairs to refrigerator in response to employee complaints at Crain's offices regarding the leaking refrigerator. Plaintiff brought a negligence cause of action against the defendants[1] and defendants now request summary judgment dismissing plaintiffs' causes of action.

A summary judgment "motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." C.P.L.R. § 3212. Failure of the movant to make a prima facie showing for judgment as a matter of law requires denial of the motion, regardless of the sufficiency of the opposing papers. *Alvarez v. Prospect Hosp.*, 68

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[1]Plaintiff Marie Bohl also brought a loss of consortium case of action against the defendants.

N.Y.2d 320, 324 (1986). Defendants argue that plaintiffs have produced no evidence that the defendants either created the condition or had actual or constructive notice of the condition and therefore, cannot be liable for negligence. "A party, as a prerequisite for recovering damages, must establish that the [defendant] created or had either actual or constructive notice of the hazardous condition that precipitated the injury [citations omitted]." *O'Connor-Miele v. Barhite & Holzinger, Inc.*, 234 A.D.2d 106 (1st Dept. 1996).

Here, there are questions of fact as to whether a dangerous condition existed on the pantry floor due to the leaking refrigerator and whether defendants created the dangerous condition by negligently repairing the refrigerator. *See Baillargeon v. Kings Co. Waterproofing Corp.*, 29 A.D.3d 838 (2d Dept. 2006). Defendants fail to submit any evidence that it did not negligently repair the refrigerator. Additionally, plaintiffs attach the affidavit of Norman Feldman, who states that one of his responsibilities as Crain's corporate office and facilities manager was to "take complaints" for any service problems within the office, including the refrigerators. He states Culligan was the only entity authorized to perform service on the refrigerators.

Mr. Feldman's signature appears on two Culligan service orders annexed to the motion papers dated April 24, 2003 and May 6, 2003, less than a week before the accident. Listed under the "service history" column is a note for February 23, 2003, which states "Leaking refrigerator." This same note appears next to April 23, 2003. Likewise, the service note of May 2, 2003 states, "Refrigerator leaking and not making any ice." These service orders show that on one occasion, the clogged dispenser was cleaned and the refrigerator defrosted and on another occasion, the ice bin was defrosted. Defendants argue that the April 23rd work order states, "Recommended to Norm [Mr. Feldman] to purchase new units." However, there is nothing attached to defendants' or plaintiffs' papers that indicate that statement.

Further, plaintiff in his deposition testimony states that his office was next to the pantry area where the refrigerator was situated. He said that the refrigerator in the pantry leaked and that "people were always mopping it up with paper towels," and that he, in fact, also mopped up water to prevent people from slipping. He had complained to Mr. Feldman about the water on the floor and had observed workmen trying to fix the refrigerator in the weeks before the accident. He further testified that the site of the accident was less than one foot from the refrigerator. After plaintiff fell, he noticed his pants and sneakers were wet. He realized the water was coming from the refrigerator when he got up and opened the refrigerator door and he saw that water was leaking from the inside of the refrigerator to the floor, and more water came out when he opened the door. Thus, defendants incorrectly contend that there is no proof that the accident was caused by a leaking refrigerator.

The present case is similar to *Baillargeon v. Kings Co. Waterproofing Corp.*, 29 A.D.3d 838 (2d Dept. 2006). In *Baillargeon*, plaintiff commenced the action against the construction company who, he claimed, negligently repaired the roof causing water leakage which plaintiff slipped on. The Court ruled that questions of fact existed whether the defendants created the dangerous condition on the floor in light of plaintiff's testimony that it had rained the night before the incident and that plaintiff's hand was in water after he fell.

The defendants' own service orders indicate that they repaired the refrigerator multiple times and the last repair was less than 10 days prior to the accident. Plaintiff's testimony is that the refrigerator near where he fell still was leaking water on the date of the accident. Defendants have not met their burden in producing evidence that they did not negligently repair the refrigerator and there are questions of fact as to whether defendants had notice of this recurring condition. The defendants' remaining arguments have been considered and are devoid of merit.

ORDERED that the motion by defendants Culligan International Company and Culligan Water Company of New York, Inc. for summary judgment is denied.

This shall constitute the decision of the Court.

December 20, 2006

Justice Rosalyn Richter

HON. ROSALYN RICHTER