

**Bonesteel v Saint Vincent's Hosp. Manhattan**

2013 NY Slip Op 30105(U)

January 18, 2013

Supreme Court, New York County

Docket Number: 114082/2008

Judge: Saliann Scarpulla

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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

*1/18/13*  
*[Signature]*

PRESENT: SALIANN SCARPULLA Justice

PART 19

Index Number : 114082/2008  
BONESTEEL, CHRISTINE  
vs.  
SAINT VINCENT'S HOSPITAL  
SEQUENCE NUMBER : 004  
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

~~motion and cross-motion~~ are decided in accordance with accompanying memorandum decision.

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JAN 22 2013

MOTION SUPPORT OFFICE  
NYS SUPREME COURT - CIVIL

FILED

JAN 23 2013

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*[Signature]*

\_\_\_\_\_, J.S.C.

SALIANN SCARPULLA

- 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

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X

CHRISTINE BONESTEEL,

Plaintiff,

- against -

Index No.: 114082/08  
Submission Date: 10/24/12

SAINT VINCENT'S HOSPITAL MANHATTAN,

**DECISION AND ORDER**

Defendant.

-----X

For Plaintiff:  
Acre Law Office, PLLC  
3144 East Tremont Avenue  
Bronx, NY 10461

For Defendant:  
Shaub, Ahmuty, Citrin & Spratt, LLP  
77 Water Street  
New York, NY 10005

**FILED**

**JAN 23 2013**

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Papers considered in review of this motion for summary:

- Notice of Motion . . . . . 1
- Aff in Support . . . . . 2
- Aff in Opp . . . . . 3
- Reply Aff . . . . . 4

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant St. Vincent's Catholic medical Centers, s/h/a Saint Vincent's Hospital Manhattan ("St. Vincent's" or "defendant") moves for summary judgment pursuant to CPLR 3212 dismissing the complaint against it.<sup>1</sup>

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<sup>1</sup> St. Vincent's originally moved for summary judgement in January 2010. On April 14, 2010, St. Vincent's filed petitions for relief under Chapter 11 of the U.S. Bankruptcy Code, staying all proceedings in this matter. By order dated June 29, 2010, this Court marked this motion off the calender without prejudice to resubmit in the event that the bankruptcy stay was lifted or the bankruptcy proceeding dismissed. The stay was modified on February 8, 2012, permitting adjudication of this action, limited to the proceeds of St. Vincent's third-party insurance coverage. St. Vincent's then renewed its

This action arises from injuries sustained by plaintiff Christine Bonesteel (“Bonesteel”) on May 4, 2008. Bonesteel alleges that she slipped and fell on that date in water on the floor of St. Vincent’s hospital.

Bonesteel testified at her deposition that she was walking in the corridor on the second floor of St. Vincent’s, adjacent to the chapel, heading toward a 12:05 mass, when she slipped in water, causing her legs to go out from under her, landing on her back and sustaining injuries. Bonesteel also testified that she didn’t see any moisture in the hallway, but was “walking normally” and not looking at the ground as she approached the chapel.

Bonesteel further testified that when she was laying on the floor waiting for help, she was wet, as were her jacket and pants. She testified that she lay in a “pool of water” and was “soaking wet.”

Immediately after falling, Bonesteel called for help, and Father James Robert O’Connell (“Father O’Connell”) came out to assist her. Bonesteel testified that upon seeing her on the ground, Father O’Connell remarked that he has called about the leak at 9:00 or 9:30 that morning, and that he was upset that it appeared that no one came to fix the leak, resulting in Bonesteel’s fall.

At his deposition, Father O’Connell, a chaplain at St. Vincent’s testifying on its behalf, stated that he heard Bonesteel calling for help, and then found her on her back in

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motion for summary, and in an order dated May 30, 2012 this court granted St. Vincent’s motion as unopposed. However, the parties entered into a Stipulation to Vacate Judgment dated July 17, 2012, and the action was restored to the calendar and resubmitted.

the hallway. He further testified that there was a large area of clear water around the area where Bonesteel fell. Father O'Connell testified that he recalled seeing water in that location earlier that day, and that he reported it to a hospital worker – a “woman who was wearing an environmental – a nurse – some kind of nurse’s aide outfit” – he saw outside the CAT scan lab at around 9:00a.m. Father O'Connell stated that when he first saw the pool of water in the hallway it was approximately five (5) feet long and two (2) feet wide, in the same location where he later found Bonesteel. Father O'Connell also testified that between the time he reported the water on the floor and the time he saw Bonesteel, he had been through that area again, and there was no water visible.

In her summons and verified complaint, Bonesteel alleges that her injuries resulted from St. Vincent’s negligent maintenance of the hallway, that St. Vincent’s has created the unsafe condition, and that the condition existed long enough that St. Vincent’s knew or should have known of the sidewalk premises. In its answer, St. Vincent’s denies all material allegations.

St. Vincent’s now moves for summary judgment pursuant to CPLR 3212 dismissing the complaint. St. Vincent’s argues that it is not liable for Bonesteel’s injuries because it did not have actual or constructive notice of the alleged dangerous condition.

In opposition, Bonesteel argues that there is prima facie evidence that the condition existed for a period of time sufficient to constitute constructive notice, that St. Vincent’s fails to establish that it maintained the property in a reasonable safe condition, did not cause or create the dangerous condition, and that there are material issues of fact to preclude an award of summary judgment for St. Vincent’s.

[\*5]

### Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). On a summary judgment motion, the court must accept the testimony of the nonmoving party as true. *O'Sullivan v. Presbyterian Hosp. in City of New York at Columbia Presbyterian Med. Ctr.*, 217 A.D.2d 98, 101 (1st Dep't 1995).

In general, a defendant in a trip-and-fall action must have notice of the defect to be liable for injuries resulting from the defect. *See Gordon v. American Museum of Natural History*, 67 N.Y.2d 836 (1986). "To prevail on a motion for summary judgment for lack of notice, defendants [are] required to make a *prima facie* showing which affirmatively establishe[s] the absence of notice as a matter of law." *Spitzer v. Bronx Park East Corps.*, 284 A.D.2d 177 (1<sup>st</sup> Dep't 2001) (citing *Fox v. Kamal Corp.*, 271 A.D.2d 485 (2d Dep't 2000)).

Here, St. Vincent's has failed affirmatively to establish the absence of notice as a matter of law. "As the movants, [it] bear[s] the burden of disproving an essential element of plaintiff[']s claims and cannot 'affirmatively establish[] the absence of notice as a matter of law . . . merely by pointing out gaps in the plaintiff's case.'" *Dabbagh v.*

*Newmark Knight Frank Global Mgmt. Svs., LLC*, 99 A.D.3d 448, 450 (1<sup>st</sup> Dep't 2012) (quoting *Martinez v. Khaimov*, 74 A.D.3d 1031, 1033 (2d Dep't 2010)).

Father O'Connell's testimony regarding notifying a woman in the hallway about the leak and the water on the floor raises a question of fact as to actual notice. If this person was employed as one responsible for cleaning and or maintaining the hallway, or reported the leak to someone who was, St. Vincent's could be found to have actual notice.

Further, there is a question of fact regarding whether St. Vincent's had constructive notice. "Constructive notice requires proof that a defect was visible and apparent and that it existed for a sufficient length of time before the accident to permit the defendant's employees to discover and remedy it." *Fox*, 271 A.D.2d at 485. Father O'Connell testified that he first noticed the pool of water and reported it around 9:00 in the morning, and later saw the floor was dry. However, he also testified that when he found Bonesteel laying on the floor, she was in fact laying in a large pool of water in the same location where he had observed a large pool of water approximately three (3) hours earlier. There are question of fact, therefore, regarding the source of the water on the hallway floor, whether it came from a leak or building defect which was not remedied, which may have been cleaned and then occurred again due to some sort leaking condition.

Finally, Bonesteel's deposition testimony, that the floor was wet causing her to slip and fall, is evidence sufficient to raise a factual question as to whether St. Vincent's knew or should have known the existence of a hazardous condition. Bonesteel's "testimony constitutes evidence from someone with personal knowledge of the facts and, whether or

not it is regarded as self-serving, it is sufficient to present an issue for trial. Plaintiff identified the wet and slippery floor as the reason for [her] fall; thus, [her] testimony cannot be dismissed as mere speculation regarding causation.” *Signorelli v. The Great Atlantic & Pacific Tea Co., Inc.*, 70 A.D.3d 439, 439-440 (1<sup>st</sup> Dep’t 2010).

Accordingly, St. Vincent’s motion for summary judgment is denied.

In accordance with the foregoing, it is hereby

ORDERED that the motion for summary judgment by defendant St. Vincent’s Catholic medical Centers, s/h/a Saint Vincent’s Hospital Manhattan is denied.

This constitutes the decision and order of the Court.

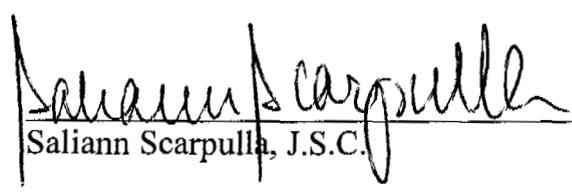
Dated: New York, New York  
January 18, 2013

**FILED**

JAN 23 2013

NEW YORK  
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ENTER:

  
Saliann Scarpulla, J.S.C.