At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tompkins County Courthouse, Ithaca, New York, on the 26th day of October, 2018.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding
STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

SANDRA G. WRAIGHT,

Plaintiff,

-vs-

CAYUGA MEDICAL CENTER AT ITHACA, INC.,

Defendant

DECISION AND ORDER

Index No. EF2016-0095
RJI No. 2018-0273-J

APPEARANCES:

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EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon Cayuga Medical Center at Ithaca, Inc. ("Defendant's") motion for Summary Judgment pursuant to CPLR §3212. Sandra G. Wraight ("Plaintiff") submitted a cross-motion for partial Summary Judgment on the issue of negligence pursuant to CPLR §3212.

The facts are not significantly in dispute. On August 25, 2015, Plaintiff was in a bathroom maintained by Defendant when she slipped and fell sustaining a fracture to her right patella. Plaintiff testified that she felt some wetness on her clothes after the fall but noticed no standing puddles of water. Minutes before the Plaintiff entered the bathroom, Defendant's employees had concluded routine cleaning including floor mopping. Defendant employees placed a yellow "wet floor" sign in the bathroom doorway after completing the mopping and Plaintiff admits to seeing the wet floor sign.

Plaintiff commenced this action by the filing of a complaint on July 6, 2016 alleging negligence in that Defendant created and had actual and constructive notice of a dangerous condition by mopping the bathroom and failing to take reasonable precautions to prevent the Plaintiff from slipping and falling[1]. The issue was joined by Defendant serving an answer.

When seeking summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact. *Amedure v. Standard Furniture Co.*, 125 AD2d 170 (3rd Dept. 1987); *Bulger v. Tri-Town Agency*, 148 AD2d 44 (3rd Dept. 1989). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. *Dugan v. Sprung*, 280 AD2d 736 (3rd Dept. 2001); *Sheppard-Mobley v. King*, 10 AD3d 70, 74 (2nd Dept. 2004) *aff'd as mod.* 4 NY3d 627 (2005); *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Winegrad v. N.Y. Univ.*

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[1]Plaintiff initially alleged defects in the bathroom plumbing resulting in the accumulation of water on the floor. However, this claim was ultimately abandoned.

Med. Ctr., 64 NY2d 851, 853 (1985). "When faced with a motion for summary judgment, a court's task is issue finding rather than issue determination *(see, Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact." *Boston v. Dunham,* 274 AD2d 708, 709 (3rd Dept. 2000); *see, Boyce v. Vazquez*, 249 AD2d 724, 726 (3rd Dept. 1998). The motion "should be denied if any significant doubt exists as to whether a material factual issue is present or even if it is arguable that such an issue exists." *Haner v. DeVito*, 152 AD2d 896, 896 (3rd Dept. 1989); *Asabor v. Archdiocese of N.Y.*, 102 AD3d 524 (1st Dept. 2013). It "is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact." *Vega v. Restani Constr. Corp.*, 18 NY3d 499, 505 (2012) (citation omitted).

In a premises liability matter, as the movant, "defendant [bears] the initial burden of demonstrating that it has maintained the property in a reasonably safe condition and that it did not create or have actual or constructive notice of the specific allegedly dangerous condition that resulted in plaintiff's injury" *Beck v. Stewart's Shops Corp.*, 156 AD3d 1040, 1041 (3rd Dept. 2017). However, whether "a dangerous condition exists is generally a question for the jury" [*Greblewski v. Strong Health MCO, LLC*, 161 AD3d 1336, 1336, (3rd Dept. 2018); *see Trincere v. County of Suffolk*, 90 NY2d 976, 977 (1997)], unless "only a single inference can be drawn from the undisputed facts." *Malley v. Alice Hyde Hosp. Ass'n*, 297 AD2d 425, 425 (3rd Dept. 2002) [internal quotation marks and citation omitted].

In support of its motion, Defendant points to the testimony of Joshua Rappleye ("Rappleye"), an environmental services supervisor for Defendant. On the date of the accident, Rappleye was responsible for overseeing housekeepers, including those cleaning the subject bathroom. Rappleye was called by a housekeeper to the subject bathroom due to someone falling. He arrived at the bathroom several minutes after Plaintiff fell. He recalls Plaintiff saying that she slipped in the bathroom. He then inspected the bathroom and found a wet floor sign had been

placed and that the floor was damp and in the process of drying. Upon inspection of the floor and mop bucket and mop, Rappleye concluded that the floor was mopped consistent with Defendant's procedures.

An affidavit from Ashley Thornton ("Thornton") was also submitted. At the time of the accident, Thornton was in training and working with Tracy Durrani ("Durrani"). Thornton mopped the subject bathroom on the date of the accident. Thornton stated she mopped the subject bathroom consistent with Defendant's procedures and the floor was the "same degree of wet as usual when I finished mopping". Five minutes after cleaning the bathroom, she saw the Plaintiff limping from the bathroom and saying that she fell in the bathroom.

Defendant also points to the testimony of Durrani, a housekeeper at Defendant. On the date of the accident, Durrani was working with and training a new housekeeper, Thornton. Durrani testified that typically the sinks and toilets are cleaned first and then the floor is mopped. Thornton mopped the floor and Durrani did not recall seeing the floor after Thornton was done. Durrani went to get a vacuum cleaner and returned to find Plaintiff limping out of the bathroom.

Defendant apparently concedes that it does have a duty to maintain the public bathrooms in a reasonably safe condition. Rather, it argues that its employees followed proper hospital procedures for floor mopping, including the placement of wet floor warning signs. It further argues it lacked actual or constructive notice of any alleged dangerous condition. However, to the extent that the floor was a dangerous condition, it is undisputed that Defendant created the condition. What is lacking is any evidence that the bathroom floor was in reasonably safe condition at the time of the accident. The floor may well have been in the same condition as it typically is after mopping but that does not necessarily mean that it was reasonably safe. Finally, as previously noted, whether a dangerous condition exists is generally a question for the jury *Greblewski* at 1336.

For the reasons set forth herein, the Defendant's motion for summary judgment is **DENIED.**

Turning to the Plaintiff's motion for partial summary judgment on the issue of liability, Plaintiff points to her own testimony wherein she says that after she slipped and fell, her hands were "soaking wet" and her pants were wet. However, she concedes that she never saw a puddle of water or other accumulation of water on the floor. Plaintiff further argues that Defendant witnesses admit that the floor was wet and that the Plaintiff told them that she slipped and fell. However, Plaintiff also argues that Defendant witnesses admitted to the floor being slippery at the time of the accident, which is nowhere in the record. Rather, only Durrani admitted that, in general, wetness after mopping makes the floor *more* slippery.

The Plaintiff's submission fails to provide evidence that the floor was a dangerous condition at the time of the accident and thus represented a breach of Defendant's duty to maintain the bathroom is a reasonably safe condition. Further, Plaintiff's testimony that her hands were "soaked" and her pants were wet is offered to suggest that the floor was excessively wet. However, this testimony is contradicted by all Defendant witnesses and therefore raises a question of fact precluding summary judgment.

Therefore, Plaintiff's motion for partial summary judgment on liability is **DENIED.**

This constitutes the **Decision and Order** of the Court.

Dated: December 14, 2018
Ithaca, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice