SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice

TRIAL/IAS, PART 23
NASSAU COUNTY

JACQUES PINARD,

Plaintiff(s),

Index No.: 602379/16

-against-

Motion Seq. No.: 001
Motion Submitted: 7/10/18

HOLY NAME OF MARY CATHOLIC SCHOOL,

Defendant(s).

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X
Affirmation in Opposition.....X
Reply Affirmation.....X

Defendant, Holy Name of Mary Catholic School (Holy Name), moves this court for an order, pursuant to CPLR §3212, granting it summary judgment and dismissing the complaint against it. Plaintiff, Jacques Pinard (Pinard), opposes the motion.

Pinard commenced this action, sounding in negligence, by service of a summons and complaint, dated April 4, 2016. Issue was joined by service of an answer dated May 23, 2016. The case certified ready for trial on November 15, 2017 and a note of issue was filed on January 16, 2018.

Holy Name is a church and a school. On February 3, 2016 at approximately 5:00 p.m, Pinard entered Holy Name to pick up his granddaughter who was attending religious instruction there. Upon entering the building, he had the option of taking steps that went up, or taking steps that went down. He used the steps going down as that was where he was supposed to pick up his granddaughter. He alleges that as he put his left foot on the first step down, he slipped and fell, causing him multiple injuries including a broken arm. It is undisputed that it had been a rainy day. Pinard alleges water tracked in from the outside rendered the steps slippery and caused his fall. Holy Name now moves for summary judgment alleging they did not create a dangerous or defective condition and if one existed, they did not have actual or constructive notice of it.

It is well settled that in a motion for summary judgment the moving party bears the burden of making a *prima facie* showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v. Twentieth Century Fox Film Corp.,* 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.,* 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 5557 [1980]; *Alvarez V. Prospect Hospital,* 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v. New York University Medical Center,* 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in

admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v. City of New York,* 49 NY2d 5557 [1980], *supra*).

Within the context of a summary judgment motion that seeks dismissal of a personal injury action the court must give the plaintiff the benefit of every favorable inference which can reasonably be drawn from the evidence (*see Anderson v. Bee Line*, 1 N Y 2d 169 [1956]). The primary purpose of a summary judgment motion is issue finding not issue determination, *Garcia v. J.C. Duggan, Inc.,* 180 AD2d 579 (1st Dept 1992), and it should only be granted when there are no triable issues of fact (*see also Andre v. Pomeroy,* 35 NY2d 361 [1974]).

"A landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, including the likelihood of injury to third parties, the potential that any such injury would be of a serious nature, and the burden of avoiding the risk" (*Giulini v. Union free School Dist. # 1*, 70 AD3d 632 [2nd Dept. 2010]; *Basso v Miller*, 40 NY2d 233, 241 [1976]).

"To impose liability upon a defendant landowner for a plaintiff's injuries, there must be evidence showing the existence of a dangerous or defective condition, and that the defendant either created the condition or had actual or constructive notice of it and failed to remedy it within a reasonable time" (*Morrison v. Apolistic Faith Mission of Portland*, 111 AD3d 684 [2d Dept 2013]; *see Winder v. Executive Cleaning Servs., LLC*, 91 AD3d 865 [2d Dept 2012]; *Gonzalez v. Natick N.Y. Freeport Realty Corp.*, 91 AD3d

597 [2d Dept 2012]).

Herein, in support of its motion, Holy Name submits, *inter alia*, the affidavit of Patrick Egan, maintenance manager for Holy Name, and the deposition of Deacon Scott Baker, business manager of Holy Name. In his affidavit, Mr. Egan stated he was working the day of the accident, and remembers that it rained almost the entire day. At the entrance to the school there was a large rubber mat, and it was in place on the date of the accident. While he left for the day at 3:30 p.m., he states there would have been no reason to remove it, and removing it would require his approval. At the time he left, he inspected the location and saw no water on the floor or steps.

Deacon Baker testified that he is the business manager of Holy Name and while he was working on the day the accident, he had left for the day by the time it occurred. He testified that most employees, including maintenance staff, work until 3:00p.m. In general, he would walk throughout the building each day to perform an inspection, but not at the same time and not on the same route. In general, if there was a problem that needed to be addressed, he would speak to Mr. Egan about it. He learned of the accident when he arrived at work the next day. Roseanne Coppola, a secretary, informed him of what happened. He wrote a report of the accident, but everything he wrote he was told by Ms. Coppola. Ms. Coppola told Deacon Baker that the accident was caused by wet stairs. When asked how something such as a wet floor is addressed, he stated: "People walk in with wet feet, they track water in. We do the best we can to keep it up."

Pinard testified that he arrived at Holy Name to pick up his granddaughter. He

denied that there was a rubber mat down on the floor at the time. He did not see water on the floor as he walked in, but saw water on the steps after he fell and was on the ground. Also, his clothing was wet, though he thought it possible they were wet both from the floor and from the rain outside.

In general, a landowner is not under an obligation to constantly address water being tracked in during inclement weather, nor must one provide rubber mats or continuously mop up the area. (*Paduano v. 686 Forest Ave, LLC*, 119 AD3d 845 [2d Dept. 2014]). However, in seeking summary judgment, a landowner must establish the lack of a defective condition, or the lack of notice of such condition. *Id.* Holy Name is unable to do either. Pinard testified that there was water on the floor at the time of his fall. While Holy Name was not obligated to constantly address the water being tracked in, they could not completely ignore a slippery floor or steps for a period of time. (*Milorava v. Lord & Taylor Holdings, LLC*, 133 AD3d 724 [2d Dept 2015]).

The evidence submitted makes it clear it appear the floor and steps had not been addressed at all from 3:30pm, or earlier. It is further unclear at what time, if at all, the wet floor and steps were addressed. Further, as none of the witnesses who testified were present at the time of the accident, and as maintenance staff left two hours before the accident and Mr. Egan had left 90 minutes before the accident, there is an issue of fact as to whether a defective condition was created and existed during that window, and whether one existed for a long enough period of time that Holy Name had constructive notice of it. As such, the court finds Holy Name has failed to establish summary judgment as a matter

of law. The motion will be denied regardless of the sufficiency of the opposition papers.

Accordingly, it is hereby

ORDERED, that Holy Name's motion for summary judgment is DENIED.

This foregoing constitutes the Decision and Order of the Court.

Dated: September 17, 2018
Mineola, N.Y.

Hon. James P. McCormack, J. S. C.

ENTERED
SEP 19 2018
NASSAU COUNTY
COUNTY CLERK'S OFFICE