SCAW

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

ANGELA HUCKE and GEORGE HUCKE,

Plaintiff(s),

- against -

MILLERIDGE INN, MILLERIDGE COTTAGE, INC., MILLERIDGE COTTAGE REALTY, LLC, MILLERIDGE VILLAGE, INC., and LAURAINE MURPHY JERICHO REAL ESTATE CORP.,

Defendant(s).

TRIAL/IAS PART 6

INDEX NO. 17719/09

MOTION SEQUENCE NO. 1

MOTION SUBMISSION DATE: March 31, 2011

XXX

The following papers read on this motion:

Notice of Motion	**X**
Affirmation in Opposition	**X**
Reply Affirmation	**X**

Upon the foregoing papers, the motion by the defendants for an Order pursuant to CPLR §3212, granting the defendants summary judgment dismissing plaintiffs' Summons and Complaint as against these defendants, is determined as hereinafter provided:

This personal injury action arises out of a slip and fall upon the floor of the defendants' premises located at 585 North Broadway, Jericho, New York on June 14, 2009 by the plaintiff Angela Hucke while attending a party celebrating the plaintiff's fiftieth wedding anniversary.

The rule in motions for summary judgment has been succinctly re-stated by the Appellate Division, Second Dept., in **Stewart Title Insurance Company, Inc. v. Equitable Land Services, Inc., 207 AD2d 880, 616 NYS2d 650, 651 (Second Dept., 1994):**

> "It is well established that a party moving for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). Of course, summary judgment is a

drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607, 467 N.Y.S.2d 944), but once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York, supra*, 49 N.Y.2d at 562, 427 N.Y.S.2d 595, 404 N.E.2d 718)."

The plaintiff Angela Hucke at the plaintiff's April 22. 2010 deposition stated:

"Q. Now, as you sit here today do you know what caused you to fall?
A. A slip
Q. A slip, okay
Were there any, like any debris from food that caused you to fall; did you see any food on the floor where you fell?
A. No.
Q. So nothing to do with someone dropping a meatball or a chicken stick or anything like that?
A. No.
Q. was your accident contributed to by any foreign substance, like a drink spilled in the area where you fell?
A. Not that I know of.
Q. Okay. So as you sit here today, you said it wasn't food and it wasn't a drink. The area wasn't wet; was it? Was it wet from either someone spilling water or dropping a drink?
A. No.
Q. Or was it greasy from someone dropping food?
A. No.
Q. Okay. What caused you to slip?
A. Just a slide, I guess.
Q. Was the floor shiny?
A. Very.
Q. Very shiny.
When did you notice the floor was very shiny?
A. When we walked in, before the guests arrived.
Q. About what time was that?
A. About 12:30.
Q. Any who recognized it was shiny; yourself, obviously?
A. Myself, yes.
Q. Anybody else?
A. I might have mentioned it to my husband.

. . .

Other than that, was there anything else on the floor in that room?
A. No.
Q. Was there any place for people to eat in this room?
A. No.
Q. You know, like cocktail tables or anything like that?
A. No.

Q. Now when you notices this at 12:30, was it the whole floor that was shiny or just parts of the floor; again we're only talking about this one room?
A. The whole floor.
Q. Did you bring that to anybody's attention at all when you noticed it?
A. No.
Q. Did you mention it to anybody from the Milleridge Inn?
A. I don't know.
Q. Did any of your guests mention it to you - -
A. No.
Q. (Continuing) - - that day, up until the time you fell?
A. No.
Q. How about after you fell, did any of your guests mention to you that the floor was shiny, as you say?
A. Some of the guests said the floor seemed extra shiny.
Q. Now when you noticed it, when you came in about 12:30, did you look at the floor?
A. At a glance.
Q. You looked at it; right?
A. Yes.
Q. You saw it was shiny?
A. Uh-hum.
Q. What else did you notice other than it being shiny, if anything?
A. Nothing else.
Q. Did you notice any ridges of wax?
A. No.
Q. Did you notice any globs of wax?
A. No, but I really wasn't looking at the floor.
Q. I understand you can only testify to what you saw.
A. Right.
Q. Did you notice any ridges of wax?
A. No.
Q. Or any residue of wax?
A. No.
Q. You way it was shiny; right?
A. Very.
Q. Could you describe it in any other way other than shiny; if you can't, you can't, if you can, you can?
A. Well, it looked like glass, it was so, you know - -
Q. It looked like glass?
A. Right.
Q. So you would say it looked highly polished?
A. Very.
Q. And the first floor was the same way, it wasn't one part was more glassy or shiny or polished, in your view; did it all look the same?
A. I think so, yes."

see deposition transcript of Angela Hucke at pgs 49-55

The Court observes that the defendants through the deposition of the defendants' General Manager Jacqueline Kupfer has established that the floor in issue is cleaned and washed but not waxed (*see deposition transcript at pgs 53-65).*

In examining the issue of a slip and fall, the Court in **Mroz v Ella Corporation**, 262 AD2d 465, 692 NYS2d 156 (Second Dept., 1999) set forth:

> "It is well settled that in the absence of evidence of a negligent application of floor wax or polish, the mere fact that a smooth floor may be slippery does not support a cause of action to recover damages for negligence (*see, Kline v Abraham, 178 NY 377, 70 NE 923; Murphy v Conner; 84 NY2d 969, 622 NYS2d 494, 646 NE2d 796; Guarino v La Shellda Maintenance Corp., 252 AD2d 514, 675 NYS2d 374).* Here, while the plaintiffs opposed the motion for summary judgment with the affidavit of a safety consultant who found that the friction coefficient of the floor tiles in the defendant's hotel bathrooms did not meet industry standards, the expert's opinion essentially concluded that the tiles were slippery due to their smoothness, which is not an actionable defect (*see, Murphy v Conner, supra; Bauer v Hirschbedner Assocs., 228 AD2d 400, 643 NYS2d 659).* Moreover, the observations of the plaintiffs' expert, which were based upon an inspection made over six years after the accident, were conclusory and insufficient to establish that the failure to properly clean the bathroom floors created a dangerous condition on the date of the injured plaintiff's fall (*see, Duffy v Universal Maintenance Corp., 227 AD2d 238, 642 NYS2d 282; Mankowski v Two Park Co., 225 AD2d 673, 639 NYS2d 847; Drillings v Beth Israel Med. Ctr., 200 AD2d 381, 606 NYS2d 191).*"
>
> **Mroz v Ella Corporation, supra**

Similar to the holding of the Court in **Mroz v Ella Corporation**, supra, while the plaintiff has submitted an affidavit of Nicholas Bellizzi, PE, said inspection of the floor in question was done approximately 1 year after the plaintiff's incident and while referencing the coefficient of friction on the later date is speculative to the coefficient of friction on the date of the accident and is devoid of any reference to the appropriate industry standard to be applied to the floor.

As such, based upon the foregoing, the defendants' application for an Order pursuant to CPLR §3212, granting the defendants summary judgment dismissing plaintiffs' Summons and Complaint as against these defendants, is **granted**.

SO ORDERED.

DATED: 6/3/2011

.....Roy S. Mahon.....
J.S.C.

ENTERED
JUN 07 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE