

**SUPREME COURT - STATE OF NEW YORK**

PRESENT: HON. PETER B. SKELOS,  
Justice.

\_\_\_\_\_  
THERESA CALCEGLIA, individually and as  
Executrix of the Estate of CARMINE CALCEGLIA,

Plaintiff,

-against-

COLIN MANAGEMENT COMPANY and COLIN  
REALTY as successor to COLIN MANAGEMENT,  
its agents, servants and employees and FRED COLIN,  
HENRY KUECK individually and d/b/a  
MANHASSET DELICATESSEN,

Defendants.

TRIAL/IAS PART 24  
NASSAU COUNTY

MOTION # 01, 02  
INDEX # 4004/01  
MOTION SUBMITTED:  
OCTOBER 15, 2003

\_\_\_\_\_  
The following papers read on this motion:

Notice of Motion/Order to Show Cause.....1  
Cross Motion/Answering Affidavits.....2, 3  
Reply Affidavits.....4

Defendants Colin Management Company, Colin Realty, and Fred Colin (“Colin defendants”) move for summary judgment. The defendants Henry Kueck, individually and d/b/a Manhasset Delicatessen (“Kueck”) cross-move for the same relief. For the reasons that follow, the motions are denied.

Plaintiff commenced this action for injuries allegedly sustained by Carmine Calceglia (the “decedent”) when, on March 18, 1998, he fell in the parking lot behind a deli located at 435 Plandome Road, Manhasset, NY. It appears he suffered a fractured pelvis as a result of the fall. Kueck owned the deli and leased it from the Colin defendants. Plaintiff alleges the decedent’s

fall was caused by the defendants' negligence in maintaining the parking lot. Plaintiff contends Kueck's employees poured greasy and soapy mop water into a storm drain located in the parking lot over the course of many years and that these acts caused the slippery conditions which caused the decedent to fall.

Decedent passed away on September 2, 1999 from heart failure. There is no evidence that his death was related to the incident at issue. The decedent never presented sworn testimony in the instant matter. There were no eyewitnesses to the alleged fall.

Defendants allege the evidence in this matter will not support a finding of liability. They cite the absence of testimony from Mr. Calceglia, the absence of eyewitness testimony, and lack of proof that deli employees dumped anything into the storm drain immediately prior to Mr. Calceglia's alleged fall. The Colin defendants claim lack of notice of any defect and the Keuck defendants claim lack of ownership and control over the parking lot where the fall occurred.

While it is true that much of the evidence presented is circumstantial, it is sufficient to create a triable issue of fact as to the liability of the defendants. According to Mr. Kueck's deposition testimony, Carmine Calceglia was an exterminator who performed services at his deli twice a month. His employees informed him that Mr. Calceglia slipped in the parking lot on the day in question. He admitted that it was the daily practice of his employees to dump dirty mop water in the storm drain where Mr. Calceglia allegedly slipped. He acknowledged that the dumpster used by the deli was located in the vicinity of the storm drain and he testified that grease removed from the deli's grease trap was placed into buckets and dumped in the dumpster on a monthly basis. Kueck's lease provided that the Colin defendants were responsible for the

maintenance and upkeep of the exterior portions of the demised premises.

To defeat a summary judgment motion in a circumstantial case, the plaintiff is required to show sufficient facts from which the negligence of the defendants and the causation of the accident by that negligence can be reasonably inferred (*Babino v City of New York*, 234 AD2d 241, 241-42). “The plaintiffs are not required to exclude every possible cause of the accident other than the defendant’s negligence, but the other possible causes must be rendered sufficiently remote so as to enable the trier of fact to reach a conclusion based upon the logical inferences to be drawn from the evidence, and not upon speculation” (*id.* at 242, citing *Thomas v New York City Transit Authority*, 194 AD2d 663, 664). Here a finder of fact could reasonably infer that soap and dirt residue in the vicinity of the storm drain, accumulated over the course of many years, caused a dangerous condition that precipitated Mr. Calceglia’s fall. The proximity of the dumpster to the area in question could reasonably be considered a contributing factor. The long term nature of the deli’s practice of dumping mop water into the storm drain also creates a question of fact as to whether the Colin defendants were on notice of said practice and whether same constitutes a special use (*see DeGiacomo v Westchester Co. Healthcare Corp.*, 295 AD2d 395; *Rene v Union Gardens Coop., Section 1, Inc.*, 299 AD2d 471, 472). Accordingly, the motions are denied.

This constitutes the decision and order of the court.

Dated: February 4, 2004

**ENTERED**

  
PETER B. SKELOS, J.S.C.

FEB 05 2004

NASSAU COUNTY  
COUNTY CLERK'S OFFICE