

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

Present: ANTONIO I. BRANDVEEN  
J. S. C.

PATRICE PAKUS and SCOTT PAKUS,  
  
Plaintiff,  
  
- against -  
  
THE TOWER, LLC,  
  
Defendant.

TRIAL / IAS PART 43  
NASSAU COUNTY

Index No. 13335/01

Motion Sequence No. 001

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits .....	<u>1</u>
Answering Affidavits .....	<u>2</u>
Replying Affidavits .....	<u>3</u>
Briefs: Plaintiff's / Petitioner's .....	_____
Defendant's / Respondent's .....	_____

The defendant THE TOWERS, LLC moves this court for an order pursuant to CPLR § 3126 granting summary judgment in favor of the defendant.

This is an action for personal injury arising out of an alleged incident that occurred at 111 GREAT NECK ROAD, GREAT NECK, NY. on December 14, 2002. The plaintiff alleges she slipped and fell on a wet and slippery floor in the lobby of the defendant's building due to the defendant's negligence.

At an examination before trial the plaintiff PATRICE PAKUS testified that on December 14, 2002 she entered the lobby of the office building at 111 Great Neck Road, Great Neck, N.Y. She walked to the elevators at the rear of the lobby. There were four elevators, two on the west side and two on the east side of the lobby. In front of each set of elevators there was a mat, three to four feet wide, which ran perpendicular to the elevator doors. She pushed the button for the elevators on the east side and waited for

one to arrive. After a few minutes she heard the sound for an elevator on the west side. As she turned and stepped off the mat onto the marble floor her left foot slipped out from under her and she fell onto her knee. After she was on the floor she noticed the floor was wet and both knees were wet.

At an examination before trial JUAN FABIAN, the maintenance supervisor testified that whenever it rains mats are placed in the lobby in front of the elevators. There is a gap of approximately 10-12 inches between the two mats. The plaintiff also submitted in opposition to the motion an affidavit from ALVIN UBELL, an expert in building maintenance. He visited the building and reviewed the examination before trial of JUAN FABIAN. He opined that the placement of the two mats with a gap between them on the marble floor created a hazardous condition as water dripping from people using the elevators would run from the saturated mats to the marble space in between them causing a slippery condition. He stated the proper maintenance would be use of one wide mat with not separation or to place another mat to cover the space between the two mats used by the defendant.

The defendant argues that there is no evidence that it created the wet condition on the lobby floor and that recent case law holds that even if it knew that water on the lobby floor in rainy weather was a recurring condition that is insufficient to establish constructive notice of the particular wet condition that caused plaintiff to fall. In support of its position the defendant submitted the affidavit of its expert witness safety consultant WILLIAM MARLETTA, Ph.D, CSP. He examined the lobby area and it was his professional opinion that the placement of the mats were adequate to maintain a safe floor surface in inclement weather.

It is well settled that a plaintiff in a so-called "slip and fall " case must demonstrate that the defendant created the dangerous condition which caused the accident or that the defendant had actual or constructive notice of that condition and failed to remedy it within a reasonable time (see, *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836; *Ligon v. Waldbaum*, 234 A.D.2d 347). To constitute constructive notice a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit the defendant to discover and remedy it.

Here, the court finds that the plaintiff has failed to meet its burden of showing the existence of a triable issue of fact (see, *Yearwood v Cshman Wakefiled, Inc.* 294 AD2d 568). The expert affidavit offered by plaintiff is of little value, since the expert's opinion was conclusory and was not supported by references to specific, currently applicable safety standards or practices (see, *Contreras v. Zabar's*, 293 A.D.2d 362, 740 N.Y.S.2d 203).

Accordingly, the motion by the defendant for summary judgment is granted.

So ordered.

Dated: May 29, 2003

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A handwritten signature in black ink, consisting of several loops and a long tail, positioned above a horizontal line.

J. S. C.

**ENTERED**

**JUN 05 2003**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**