

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Brown v. Phillbert

2020 N.Y. Slip Op. 06847 (App. Div. 2020) · No. Appeal No. 12426; Case No. 2020-02348; Index No. 27283/17E · Decided November 19, 2020

SUMMARY

The Appellate Division, First Department, affirmed the denial of defendants' motion for summary judgment in a premises-liability action involving a plaintiff's fall on water in a building vestibule. The court held that defendants failed to establish prima facie that they did not create or have actual or constructive notice of the allegedly hazardous condition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gische, J.P.; Mazzairelli, J.; Moulton, J.; Mendez, J.
JURISDICTION	New York
DECIDED	November 19, 2020
DOCKET	Appeal No. 12426; Case No. 2020-02348; Index No. 27283/17E
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order of Supreme Court, Bronx County, denying their motion for summary judgment dismissing the complaint.
STANDARD OF REVIEW	On a motion for summary judgment, the moving defendants had the burden to establish prima facie that they did not create the alleged dangerous condition and lacked actual or constructive notice of it.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Audrey Phillbert et al. v. Corretta Brown

TOPICS

- premises liability
- negligence
- summary judgment
- standard of review
- appellate procedure

PRACTICE AREAS

- premises liability
- negligence
- civil procedure

QUESTIONS PRESENTED

1. Whether defendants established prima facie that they neither created nor had actual or constructive notice of the water condition that allegedly caused plaintiff's fall.
2. Whether defendants were entitled to summary judgment dismissing the premises-liability complaint.

HOLDINGS

1. Defendants failed to establish prima facie that they neither created nor had actual or constructive notice of the alleged water condition; therefore, summary judgment dismissing the complaint was properly denied.

KEY QUOTATIONS

*“Defendants failed to establish prima facie that they neither created nor had actual or constructive notice of the water condition alleged to have caused plaintiff's fall in the vestibule of their building” (*1)*

FACTUAL BACKGROUND

Plaintiff fell in the vestibule of defendants' building after it rained. A rain mat normally placed near the front door had been removed for cleaning by the superintendent and was not replaced, and water allegedly accumulated in the vestibule and on marble steps that lacked anti-skid strips. Defendants relied on surveillance video suggesting another tenant had collapsed an umbrella shortly before the accident, but the video did not conclusively establish that this tenant created the condition, and there was no evidence showing when the vestibule floor had last been inspected.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied defendants' motion for summary judgment dismissing the complaint. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Pfeuffer v. New York City Hous. Auth., 93 A.D.3d 470 (1st Dep't 2012)

OPINION

PER CURIAM.

Brown v Phillbert (2020 NY Slip Op 06847) Brown v Phillbert 2020 NY Slip Op 06847 Decided on November 19, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: November 19, 2020

Before: Gische, J.P., Mazzairelli, Moulton, Mendez, JJ. Index No. 27283/17E Appeal No. 12426 Case No. 2020-02348 [*1]Corretta Brown, Plaintiff-Respondent, vAudrey Phillbert et al., Defendants-Appellants.

Lester Schwab Katz & Dwyer, LLP, New York (Jeffrey B. Aronwald of counsel), for appellants. Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C., Mineola (Martin Block of counsel), for respondents. Order, Supreme Court, Bronx County (Fernando Tapia, J.), entered on or about May 1, 2020, which denied defendants' motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Defendants failed to establish prima facie that they neither created nor had actual or constructive notice of the water condition alleged to have caused plaintiff's fall in the vestibule of their building (see *Pfeuffer v New York City Hous. Auth.*, 93 AD3d 470 [1st Dept 2012]). It is undisputed that it rained on the day of plaintiff's accident, and that a rain mat usually placed next to the building's front door had been removed for cleaning by the superintendent and not [*2]replaced with another available mat.

There is some evidence that the mat's absence allowed water to accumulate in the vestibule and on the marble steps leading to the vestibule as people entered from outside. Plaintiff asserts that this accumulation of water on the steps, which lacked any anti-skid strips, was the cause of her fall.

The surveillance video relied upon by defendants does not show conclusively that the condition was created by another tenant of the building collapsing her umbrella in the vestibule just moments before plaintiff's accident. Nor is there any evidence as to when the vestibule floor was last checked before plaintiff's accident. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 19, 2020