

**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

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

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