

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

Maria v. Concourse Estate, LLC

2021 N.Y. Slip Op. 07083 (App. Div. 1st Dep't Dec. 21 2021) · No. Appeal No. 14895; Case Nos. 2021-00224, 2021-00981; Index No. 25790/18E · Decided December 21, 2021

SUMMARY

The Appellate Division, First Department, unanimously affirmed the denial of Concourse Estate, LLC's motion for summary judgment in a premises-liability action arising from Carlos Maria's slip-and-fall on a hallway floor. The court held that the defendant failed to establish prima facie that its contractor did not create the slippery condition or that it lacked constructive notice of the condition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Renwick, J.P.; Oing, J.; Singh, J.; Scarpulla, J.; Pitt, J.
JURISDICTION	New York
DECIDED	December 21, 2021
DOCKET	Appeal No. 14895; Case Nos. 2021-00224, 2021-00981; Index No. 25790/18E
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Concourse Estate, LLC appealed from an order denying its motion for summary judgment dismissing the complaint against it.
STANDARD OF REVIEW	Summary judgment is proper only where the movant establishes prima facie entitlement to judgment as a matter of law. A defendant moving for summary judgment in a premises-liability action must make a prima facie showing that it did not create the dangerous condition and lacked actual or constructive notice of it; identifying gaps in the plaintiff's proof is insufficient.
PRECEDENTIAL VALUE	Published opinion; precedential within the First Department subject to later treatment and official correction.
PARTIES	Concourse Estate, LLC v. Carlos Maria

TOPICS

premises liability

personal injury

summary judgment

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Concourse Estate, LLC established prima facie that its nonparty contractor did not cause or create the alleged slippery condition.
2. Whether Concourse Estate, LLC established prima facie that it lacked actual or constructive notice of the alleged dangerous condition.
3. Whether the plaintiff's failure to see the condition before falling established the defendant's lack of notice.
4. Whether the defendant was entitled to summary judgment based on perceived gaps in the plaintiff's evidence.

HOLDINGS

1. The defendant failed to establish prima facie that its nonparty contractor did not cause or create the alleged slippery condition.
2. The defendant failed to establish prima facie that it lacked constructive notice of the alleged slippery condition.
3. The plaintiff's failure to notice the slippery condition before the accident did not establish that the defendant lacked notice.
4. The defendant could not satisfy its summary-judgment burden merely by identifying perceived gaps in the plaintiff's evidence.

KEY QUOTATIONS

“Defendant's failure to make its prima facie showing requires denial of its motion, regardless of the sufficiency of plaintiff's opposition”

FACTUAL BACKGROUND

Carlos Maria alleged that he slipped and fell on a slippery condition on the terrazzo marble floor of a second-floor hallway in his residential apartment building. Concourse Estate, LLC owned the building, and a nonparty contractor had been renovating an apartment adjacent to the hallway. The property manager testified about the defendant's typical hallway-maintenance practices but could not identify when the area was last cleaned or inspected, and the defendant offered no evidence showing when the contractor last worked near the accident location or documentary proof concerning cleaning or inspection.

PROCEDURAL HISTORY

Carlos Maria sued after slipping and falling on a terrazzo marble hallway floor in a residential apartment building owned by Concourse Estate, LLC. The Supreme Court, Bronx County, denied Concourse's motion for summary judgment, as amended, insofar as appealed from. The Appellate Division, First Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Rodriguez v. Board of Educ. of the City of N.Y., 107 A.D.3d 651, 651-652 (1st Dep't 2013)
- Wright v. Emigrant Sav. Bank, 112 A.D.3d 401, 401 (1st Dep't 2013)
- Castillo-Sayre v. Citarella Operating LLC, 195 A.D.3d 513 (1st Dep't 2021)
- Romero v. Morrisania Towers Hous. Co. Ltd. P'ship, 91 A.D.3d 507, 507-508 (1st Dep't 2012)
- Vazquez v. 3M Co., 177 A.D.3d 428, 429 (1st Dep't 2019)
- Vargas v. Riverbay Corp., 157 A.D.3d 642 (1st Dep't 2018)
- Barrett v. Aero Snow Removal Corp., 167 A.D.3d 519, 520 (1st Dep't 2018)
- Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 (1985)