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The Slippery Floor Case: Tracked in Precipitation and Liability of a Property Owner

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Mary works in a high-rise, commercial office building in Midtown Manhattan. She is on her way to work on a rainy Tuesday morning. After she walks through the revolving door and into the lobby, she steps onto a rain mat that was put down by the building janitorial staff. Mary then walks towards the elevators that would bring her up to her office. She steps off the mat onto the lobby floor (probably made of granite or some type of stone material), takes a step or two, and then slips and falls due to water that had been tracked in by others before her. This is a common premises liability scenario. What is the property owner's liability in this case?

Property owner's general standard of care

In general, a landowner has a duty to maintain his property in a reasonably safe condition under the prevailing circumstances.[1] To establish a prima facie case against an owner or possessor of land, plaintiff must show that defendant either (1) created the condition that caused the accident, or (2) had actual or constructive notice of the condition.[2]

If an action is based on an unsafe condition that was not created by defendants, then notice, either actual or constructive, of the condition which caused plaintiff's fall, and a reasonable time to correct it, are essential for plaintiff to establish liability.[3]

Actual notice may be found when the defendant created the condition or was aware of its existence.[4] Plaintiff must demonstrate the "identity of the persons to whom notice of the condition was allegedly given and when and how it was given."[5] In most cases, plaintiff will be unable to establish that defendant had actual notice of the wet condition on the lobby floor and will also be unable to establish that defendant created the condition.

"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 defendant's employees to discover and remedy it."[6] A plaintiff relying on constructive notice is required to demonstrate the length of time the condition complained of existed before the accident.[7]

Property owners have no obligation to provide a constant, ongoing remedy for slippery conditions caused by tracked-in precipitation

It is well-settled that "a property owner is not obligated to provide a constant remedy to the problem of water being tracked into a building during inclement weather" and "has no obligation to cover all of its floors with mats or to continuously mop up all moisture resulting from tracked-in precipitation."[8]

In *Dubensky v. 2900 Westchester Co.*, LLC, the plaintiff allegedly was injured when, after she stepped off a carpet runner, she slipped and fell on accumulated water in the lobby of the building in which she worked. It was raining at the time of her accident. She alleged that the defendants were negligent in permitting the lobby floor to become and remain unsafe and in failing to place adequate mats. The defendants moved for summary judgment, inter alia, based on the "storm-in-progress" doctrine. In affirming the order that granted defendants summary judgment, the Second Department noted that "defendants were not required to cover all of their floors with mats, nor to continuously mop up all moisture resulting from tracked-in precipitation."[9]

Likewise, in *Kovelsky v. City Univ. of N.Y.*, the First Department granted defendants' motions to dismiss the complaint because plaintiff failed to establish that defendants could have prevented the wet and slippery conditions on the floor through reasonable care. The Court held that the defendant was not required to cover all its floors with mats or to continuously mop up all moisture resulting from tracked and melting snow.[10]

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In *Negron v. St. Patrick's Nursing Home*, the Second Department reversed the trial court's denial of the defendant's motion for summary judgment where plaintiff was injured when he slipped and fell on tracked rain water present on the floor of a nursing home. The Second Department again applied the storm-in-progress doctrine, stating that "defendant was not required to cover all the floors with mats, nor to continuously mop up all moisture resulting from tracked-in rain."[11]

In *Grib v. New York City Housing Auth.*, the Second Department upheld the grant of summary judgment to a defendant where the plaintiff slipped and fell on a hallway floor in the apartment where she resided. At the time, it was raining, and water was tracked into the hallway as a result. Once more, the appellate division held that summary judgment and dismissal of plaintiff's complaint were warranted, stating the same principles as in the *Dubensky*, *Kovelsky*, and *Negron* cases.[12]

Improper placement of mats will not create a triable issue of fact

If plaintiff argues that she fell because of the improper placement of the mats on the surface of the lobby floor, this argument has no merit and will be insufficient to create a triable issue of fact.[13] In *Toner v. National Railroad Passenger Corp.*, the First Department awarded summary judgment to the defendant where "[t]he only disputed factual issue concerned the placement of the mats."[14] Specifically, the plaintiff claimed that the subject mats were placed three feet from the bottom of a staircase, whereas the defendant claimed that the mats were flush against the bottom of the staircase. Given these facts, the First Department found as follows:

> This dispute over the precise position of the mats, however, is insufficient to establish a triable issue of fact to defeat defendants' prima facie showing. "The reasonable care standard does not require a defendant to cover all of its floors with mats to prevent a person from falling on tracked-in-moisture; nor does it require a defendant to place a particular number of mats in particular places".[15]

Absent proof that the wet spot was sufficiently visible and had been there long enough to discover and remedy, constructive notice cannot be imputed to the property owner

A property owner's general awareness that an area becomes wet because of inclement weather does not constitute constructive notice of the specific condition that gave rise to an accident.[16]

In *Rouse v. Lex Real Assoc*, plaintiff was injured because of a wet spot on the lobby floor. In affirming the order that granted defendants summary judgment, the First Department held that "absent proof that the wet spot was sufficiently visible and had been there long enough to permit discovery and remedy before the accident, it cannot be inferred that they had constructive notice."[17]

The Second Department held the same in *Pinto v. Metropolitan Opera.*[18] In Pinto, the plaintiff allegedly was injured when she slipped and fell on an accumulation of water at the foot of a staircase in the Metropolitan Opera. In opposition to the defendants' motion for summary judgment, the plaintiff argued that the defendants had notice of a recurring condition of water being tracked-in from outside by patrons during inclement weather, permitting an inference of constructive notice, and that the defendants failed to take reasonable measures to abate the alleged accumulation of water. Affirming the order that granted defendants summary judgment, the Second Department held that constructive notice could not be imputed to the defendants where water was tracked inside by other patrons.[19]

Conclusion

If you represent a property owner or tenant in possession in a slip-and-fall case arising out of moisture on an interior surface that had been tracked inside during inclement weather, you have defenses available. To establish those defenses, obtain a certified weather report that establishes ongoing precipitation at the time of the accident. Consider retaining a forensic weather consultant to provide an opinion within a reasonable degree of meteorological certainty that precipitation was falling in the location of plaintiff's accident at the time of the accident and

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for some time before.

In addition, try to obtain and preserve building surveillance footage of the incident, and for some time before the incident, to show that mats were placed on the floor, that warning signs were out, and that other people walking in that area had no trouble entering the building before plaintiff. The video may also show other visitors entering and closing or shaking their umbrellas.

The foregoing evidence will help establish that the property owner satisfied its obligation to maintain the premises in a reasonably safe condition if plaintiff was injured due to a slip and fall on water that was tracked in during an ongoing storm.

1 *Basso v. Miller*, 40 N.Y.2d 233 (1976).

2 *Peralta v. Henriquez*, 100 N.Y.2d 139 (2003); *Eddy v. Tops Friendly Markets*, 91 A.D.2d 1203 (4th Dep't 1983), affd, 59 N.Y.2d 692 (1983); *Hanley v. Affrotiu*, 278 A.D.2d 868 (4th Dep't 2000); *Brown v. Big V Supermarkets, Inc.*, 188 A.D.2d 798 (3d Dep't 1992).

3 *Simmons v. Metropolitan Life Ins. Co.*, 84 N.Y.2d 972 (1994); *Fitzgerald v. Adirondack Transit Lines, Inc.*, 23 A.D.3d 907 (3d Dep't 2005); *Arcuri v. Vitolo*, 196 A.D.2d 519 (2d Dep't 1993); *Mennes v. Syfeld Management, Inc.*, 75 A.D.2d 936 (3d Dep't 1980); *Moorhead v. Hummel*, 36 A.D.2d 682 (4th Dep't 1971); *Caligurie v. Schreck's Iron & Metal Corp.*, 8 A.D.2d 991 (4th Dep't 1959).

4 *Pianforini v. Kelties Bum Steer*, 258 A.D.2d 634 (2d Dep't 1999).

5 *Carlos v. New Rochelle Mun. Hous. Auth.*, 262 A.D.2d 515 (2d Dep't 1999).

6 *Gordon v. America Museum of Natural History*, 67 N.Y.2d 836 (1986).

7 *Yearwood v. Cushman & Wakefield, Inc.*, 294 A.D.2d 568, 568-569 (2d Dep't 2002).

8 *Paduano v. 686 Forest Avenue, LLC*, 119 A.D.3d 845, 845 (2d Dep't 2014): see also, *Miller v. Gimbel Bros.*, 262 N.Y. 107 (1933); *Beceren v. Joan Realty, LLC*, 124 A.D.3d 572 (2d Dep't 2015); *Aguila v. Fox Hills Partners, LLC*, 123 A.D.3d 952 (2d Dep't 2014); *Yearwood v. Cushman & Wakefield, Inc.*, supra; *Murray v. Banco Popular*, 132 A.D.3d 743 (2d Dep't 2015); *Orlon v. BFP 245 Park, Co.*, LLC, 84 A.D.3d 764 (2d Dep't 2011); *Zerilli v. Western Beef Retail, Inc.*, 72 A.D.3d 681 (2d Dep't 2010); *Dubensky v. 2900 Westchester Co., LLC*, 27 A.D.3d 514 (2d Dep't 2006); *Negron v. St. Partick's Nursing Home*, 248 A.D.2d 687 (2d Dep't 1998).

9 27 A.D.3d 514 (2d Dep't 2006).

10 221 A.D.2d 234 (1st Dep't 1995).

11 248 A.D.2d 687 (2d Dep't 1998).

12 132 A.D.3d 725 (2d Dep't 2015).

13 See, *Toner v. National Railroad Passenger Corp.*, 71 A.D.3d 454 (1st Dep't 2010); *Pomohac v. TrizecHahn 1065 Ave. of Ams., LLC*, 65 A.D.3d 462, 464 (1st Dep't 2009); *Kovelsky v. City Univ. of N.Y.*, supra; see also, *Rogers v. Rockefeller Group Int'l, Inc.*, 38 A.D.3d 747 (2d Dep't 007); *Dubensky v. 2900 Westchester Co., LLP.*, supra; *Ford v. Citibank, N.A.*, 11 A.D.3d 508 (2d Dep't 2004); *Yearwood v. Cushman & Wakefield, Inc.*, supra; *Negron v. St. Patrick's Nursing Home*, supra.

14 *Toner*, 71 A.D.3d at 456.

15 *Id.* at 456, quoting *Pomahac v. TrizecHahn 1065 Ave. of the Ams., LLC*, 65 A.D.3d 462, 465 (1st Dep't 2009).

16 *Solazzo v. New York City Tr. Auth.*, 6 N.Y.3d 734 (2005); *Musante v. Dep't of Educ. of City of N.Y.*, 97 A.D.3d 731 (2d Dep't 2012); *Asante v. JP Morgan Chase & Co.*, 93 A.D.3d 429 (1st Dep't 2012); *Rouse v. Lex Real Assoc.*, 16 A.D.3d 273 (1st Dep't 2005).

17 16 A.D.3d 273 (1st Dep't 2005).

18 61 A.D.3d 949 (2d Dep't 2009).

19 *Id.*, see also, *Perlongo v. Park City 3 & 4 Apartments, Inc.*, 31 A.D.3d 409 (2d Dep't 2006).

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