

## **Summary Judgment for Retailer in Recent New York Slip and Fall Case**

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A "slip and fall" or "trip and fall" is the term for an injury which occurs when someone slips, trips or falls as a result of a dangerous or hazardous condition on someone else's property. It includes falls as a result of water, ice or snow, as well as abrupt changes in flooring, poor lighting, or a hidden hazard, such as a gap or hard to see hole in the ground or floor. When an incident such as this occurs, a retailer or restaurant owner may face liability if they had notice of the condition, whether actual or constructive.

In a slip and fall case, the property owner, if moving for summary judgment has the burden of demonstrating, prima facie, that it did not create the alleged hazardous condition or have actual or constructive notice of its existence for a sufficient length of time to discover and remedy it.

In a recent New York case, the Defendant/store owner moved for summary judgment in a personal injury action against the store owner for injuries sustained when a patron slipped and fell on a wet portion of the store's floor. The court found that the Defendant was entitled to judgment as a matter of law since it established that it did not create the alleged wet condition on the floor, had no actual notice of it, and had no obligation to cover all of its floors with mats, or continuously mop up all moisture where rain had started only a short time before the accident occurred. Zerilli v. Western Beef Retail, Inc., 2010 WL 1375418 (N.Y.A.D. 2 Dept. 2010) The Defendant had met its burden for a summary judgment motion.

Moreover, as there was no evidence that the condition complained of was present for a sufficient period of time for the Defendant to have discovered it, there was no basis for even an inference that the Defendant had constructive notice of the condition.

In addition, Plaintiff, in this case failed to submit evidence sufficient to raise a triable issue of fact as to whether the store owner had actual notice of a recurring hazardous condition, such that it could be charged with constructive notice of the alleged wet condition, which caused the injured Plaintiff to fall. Id.

The court therefore granted summary judgment for the Defendant/store owner and dismissed the Complaint. This case falls in line with prevailing New York law.

Fall related injuries are of large concern to retail and restaurant owners. Yet, owners of these establishments are only considered negligent for an injury caused by a dangerous condition that they knew about, or should have known about. Otherwise, a motion for summary judgment should be pursued and is often successful.