

**Igbokwe v Terrace on the Park, LLC**

2020 NY Slip Op 35713(U)

July 31, 2020

Supreme Court, Queens County

Docket Number: Index No. 704005/18

Judge: Timothy J. Dufficy

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**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**

-----X  
**NNAMDI IGBOKWE,**

**Plaintiff,**

**-against-**

**Index No.: 704005/18**

**Mot. Cal. Date: 7/21/20**

**Mot. Seq.: 3**

**TERRACE ON THE PARK, LLC, CRYSTAL  
BALL GROUP, INC. D/B/A TERRACE ON  
THE PARK,**

**Defendants.**

-----X

The following numbered papers were read on this motion by defendant Crystal Ball Group, Inc. d/b/a Terrace on the Park (Crystal Ball) for an order, pursuant to CPLR 3212, granting summary judgment in its favor and dismissing the plaintiff’s complaint as against them; and on the plaintiff’s cross-motion to strike defendant’s Answer.

	<u>PAPERS</u>
	<u>NUMBERED</u>
Notice of Motion-Affidavits-Exhibits.....	EF 62-72
Affidavits in Opposition to Mot. and in Support of Cross-Motion-Exhibits.....	. EF 75-80; 83
Notice of Cross-Motion.....	EF 84
Replying Affidavits.....	EF 81

Upon the foregoing papers, it is ordered that the motion by defendant Crystal Ball Group Inc. d/b/a Terrace on the Park, is denied; and the cross-motion by plaintiff is granted, solely to the extent set forth below:

Turning first to the main motion, the motion is denied.

Defendant Crystal Ball moves for summary judgment in this action seeking damages for personal injuries allegedly sustained by plaintiff Nnamdi Igbokwe in a slip-and-fall, while entering the defendant’s premises, located at 52-11 111<sup>th</sup> Street, Flushing, NY, on March 5, 2017. Plaintiff maintains that he slipped and fell on a clear liquid on the surface of the ground as he attempted to enter defendant’s wedding venue premises, and was caused to sustain serious personal injuries. He further maintains that he sustained the injuries due to the negligence of defendants.

To establish a *prima facie* case of negligence, a plaintiff must establish the existence of a duty, a breach of the duty, and that said breach was the proximate cause of their injuries. (See *Gordon v Muchnick*, 180 AD2d 715 [2d Dept 1992]). However, absent a duty of care, there is no breach and no liability. (*Id.*; see also *Marasco v C.D.R. Electronics Security & Surveillance Systems Co., et.al.*, 1 AD3d 578 [2d Dept 2003]).

A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a *prima facie* showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (see *Knack v Red Lobster*, 98 AD3d 473 [2d Dept 2012]; *Sloane v Costco Wholesale Corp.*, 49 AD3d 522, 523 [2d Dept 2008]; see also *Kramer v SBR & C.*, 62 AD3d 667 [2d Dept 2009]). A defendant has constructive notice of a defect when the defect is visible and apparent, and existed for a sufficient length of time before the accident that it could have been discovered and corrected (see *Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838 [1986]).

Here, defendant failed to establish its *prima facie* entitlement to judgment, as a matter of law, by failing to submit evidence that it neither created nor had actual or constructive notice of the condition that allegedly caused the plaintiff's accident. Defendant has failed to submit an affidavit or examination before trial transcript testimony of one with personal knowledge. Without such, there is no evidence submitted by defendant as to the last time the subject area was inspected prior to plaintiff's fall. Furthermore, as discussed below, defendant has not appeared for its examination before trial despite the existence of three (3) Court Orders ordering same. As such, defendant failed to establish a *prima facie* case.

Assuming *arguendo* that defendant had established a *prima facie* case, the motion would be denied as plaintiff raises a triable issue of fact in opposition. Plaintiff submits, *inter alia*, photographs depicting the accident site and the spilled liquid; and his own examination before trial transcript testimony wherein he testifies, *inter alia*, that: he slipped and fell in the entranceway of the wedding venue, in a location where dozens of people, including defendant's own staff and valet staff, were located; and there were a lot of people at the entryway to the venue, but nobody alerted him to the presence of liquid on the ground prior to his fall; there was no sign saying "wet floor," nor anyone cleaning up the liquid; and he was looking straight ahead of him prior to his fall.

Accordingly, there are triable issues of fact in connection with, *inter alia*, whether a defective condition existed, whether defendant had either actual or constructive notice of a defective condition, whether defendant created a defective condition causing plaintiff's accident, and whether defendant acted reasonably under the circumstances (*See Gonzalez v American Oil Co.*, 42 AD3d 253 [1st Dept 2007]). On these issues, a trial is needed and the case may not be disposed of summarily. As there remains issues of fact in dispute, the defendant's motion must be denied.

Turning now to the plaintiff's cross motion to strike the defendant's Answer. Same is granted, to the following extent:

Pursuant to the Preliminary Conference Order of this Court, dated December 13, 2018, defendant Crystal Ball was directed to, *inter alia*, appear for an examination before trial. Said defendant failed to comply with the terms of this Order. Thereafter, pursuant to the Compliance Conference Order of Hon. Maureen A. Healy, dated June 19, 2019, defendant Crystal Ball was again directed to, *inter alia*, appear for an examination before trial. Said defendant has failed to comply with the terms of this Order. Thereafter, an Order, dated December 17, 2019, was issued by this Court wherein defendant, Crystal Ball was again directed to, *inter alia*, appear for an examination before trial. Said defendant has failed to comply with the terms of this Order.

Defendant Crystal Ball Group d/b/a Terrace on the Park has failed to comply with three (3) Court Orders.

The Court finds that defendant, Crystal Bal Group, Inc., is to appear for an examination before trial, as directed below and, if Defendant Crystal Ball Group, Inc. fails to comply with the instant Order, their Answer will be stricken.

Accordingly, it is

**ORDERED** that defendant's motion is denied; and it is further

**ORDERED** that the plaintiff's cross-motion is granted, ONLY to the extent set forth above, in that:

Defendant Crystal Ball Group, Inc. d/b/a Terrace on the Park is to appear for an EBT on a date, time, and place mutually agreed upon by the parties or via Skype for Business, Zoom, Skype, Microsoft Teams or its equal, **no later than** sixty (60) days from

the date of this Order and failure to comply with the instant Order shall result in said defendant Crystal Ball Group., Inc.'s Answer being stricken.

The foregoing constitutes the decision and order of the Court.

**Dated: July 31, 2020**



**TIMOTHY J. DUFFICY, J.S.C.**

**FILED & RECORDED  
8/3/2020  
12:00 PM  
COUNTY CLERK  
QUEENS COUNTY**