

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable MARTIN J. SCHULMAN IAS PART 7
Justice

SYLVIA LEES and GRAHAM D. LEES,

Index No.: 15559/02

Plaintiffs,

Motion Date: 6/15/04

-against-

Motion Cal.: 28

COLIN SERVICE SYSTEMS, INC., and
HALMAR EQUITIES, INC.,

Defendants.

The following papers numbered 1 to 12 read on this motion and cross-motion by the defendants Colin Service Systems, Inc. and Halmar Equities, Inc. for an Order pursuant to CPLR § 3212 for summary judgment dismissing the complaint and any cross-claim against it

PAPERS

NUMBERED

Notice of Motion-Affidavits-Memo of Law.....	1-4
Notice of Cross-Motion-Affidavits-Exhibits..	5-7
Answering Affidavits-Exhibits.....	8-10
Replying Affidavits-Exhibits.....	11-12

Upon the foregoing papers, it is hereby ordered that this motion by co-defendant Halmar Equities, Inc. ("Halmar") for an Order pursuant to CPLR § 3212 for summary judgment dismissing the complaint and any cross-claim against it is granted, and the cross-motion by co-defendant Colin Services Systems, Inc. ("Colin") for an Order pursuant to CPLR § 3212 for summary judgment dismissing the complaint and any cross-claims against it denied, as follows:

This action arises from an incident which occurred on June 14, 2001, when the plaintiff allegedly slipped and fell on a wet substance on the floor where she worked.

It is well settled that a defendant will not be liable for a dangerous or defective condition on its property unless it created the condition, or had actual or constructive notice of its existence and failed to remedy it within a reasonable time. *See, Gordon v American Museum of Natural History*, 67 NY2d 836; *Goldin v Riker*, 273 AD2d 197. To establish constructive notice,

a plaintiff must provide evidence that the condition was visible and apparent, and that it existed for a sufficient period of time to permit a defendant to discover and remedy it. See, *Gordon, supra; Negri v Stop & Shop, 65 NY2d 625; Lewis v Metropolitan Transp. Auth., 64 NY2d 670.*

With regard to defendant Halmar, Halmar established its prima facie entitlement to judgment as a matter of law by demonstrating that it neither created the condition that allegedly caused the plaintiff to fall, nor had actual or constructive notice of the alleged dangerous condition. See, e.g., *Gilliam v White Castle, 2004 N.Y. App. Div. LEXIS 8400 (2nd Dept., June 14, 2004); Galietta v New York Sports Club, 4 AD3d 449.*

Inasmuch as the plaintiff has failed submit any opposition to this motion, she has failed to raise a triable issue of fact as to whether Halmar created or had actual notice of the allegedly dangerous condition. The motion by Halmar is therefore granted, and the complaint and any cross-claims against it are dismissed.

The cross-motion for summary judgment by co-defendant Colin is denied.

The plaintiff herein filed a Note of Issue on September 12, 2003. This cross-motion was served on March 29, 2004, two months past the applicable 120 day period provided by CPLR § 3212.

This court's discretion is constrained by the recent ruling of the Court of Appeals in *Brill v City of New York, 2004 N.Y. LEXIS 1526(Court of Appeals, June 10, 2004)*, in which the court ruled that in considering a late motion for summary judgment, "no excuse at all, or a perfunctory excuse, cannot be good cause".

Here, Colin has failed to seek leave to file this late motion for summary judgment, and has provided no excuse whatsoever for its delay. In view of the *Brill* decision regarding "the goals of orderliness and efficiency in State Court practice," this court lacks any discretion to consider this late motion, whether meritorious or not.

The cross-motion by defendant Colin Service Systems, Inc. is therefore denied.

Dated: July 21, 2004

J.S.C