

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

2015 JCL - 5 P 2-00

ALDA AMENDOLA,

Plaintiff,

-against-

MLTK, LLC,

Defendant.

DCM PART 1

Present:

HON. CHARLES M. TROIA

DECISION AND ORDER

Index No. 100656/13

Motion No. 3262-001

The following papers numbered 1 to 3 were marked fully submitted on the 20th day of March, 2015.

	Papers Numbered
Notice of Motion to Dismiss the Complaint, with Supporting Papers and Exhibits (dated October 6, 2014).....	1
Affirmation in Opposition (dated January 16, 2015).....	2
Reply Affirmation (dated March 19, 2015).....	3

Upon the foregoing papers defendants motion for summary judgment dismissing the complaint is granted.

This is an action for personal injuries which took place on December 31, 2012 when plaintiff slipped and fell inside the Shoprite Supermarket located on Hylan Boulevard in Staten Island, New York. Plaintiff testified at her Examination Before Trial on December 13, 2013 that the cause of her fall was "... too much wax". According to plaintiff it was slippery, transparent and shiny (see Defendant's Exhibit "G" pp 10, 34). Plaintiff

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additionally testified that on the spot where she fell there was no liquid, dirt or debris at the time of the fall (*id.* at 33).

In support of the motion for summary judgment, defendant relies on the succession of cases which hold that a property owner may be held liable for a dangerous or defective condition on the property if the owner created the condition or had actual or constructive notice of it (see Marino v Stop & Shop Supermarket Co., 21 AD3d 531). However, "in the absence of evidence of a negligent application of floor wax or polish, the mere fact that a smooth floor may be shiny or slippery does not support a cause of action to recover damages for negligence, nor does it give rise to an inference of negligence" (see Guarino v La Shellda Maintenance Corp., 252 AD2d 514, 515; Ventriglio v Staten Is. Univ. Hosp., 6 AD3d 525, 526; Santantonio v Stop & Shop, 5 AD3d 659, 660; see Kociecki v EOP-Midtown Props., LLC, 66 AD3d 967; Mroz v Ella Corp., 262 AD2d 465, 466). At bar, plaintiff has wholly failed to allege any negligent application of wax or any other cleaning substance nor has plaintiff presented any evidence in the form of expert or other testimony to support a theory of negligent application of wax or any other substance.

Moreover, defendants has annexed the testimony and affidavit of Mary Beth Scaturro, Assistant Store Manager at Shoprite, James Nappo, Maintenance Manager at Shoprite, the Shoprite Customer incident form and the Shoprite Customer Statement form all of which support defendants position that they neither created the condition which caused the accident nor had actual or constructive notice of the condition (see Nisi v Shop-Rite Supermarkets, Inc., 85 AD3d 749). In opposition to the defendant's motion, the

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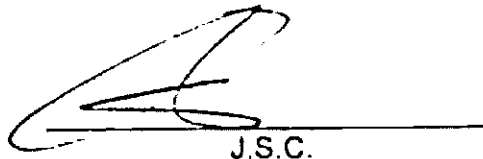
plaintiff failed to raise a triable issue of fact as to whether the defendant created or had actual or constructive notice of the allegedly hazardous slippery condition (see Popovec v Great Atl. & Pac. Tea Co., Inc., 26 AD3d 321; Sanchez v Delgado Travel Agency, 279 AD2d 623).

Accordingly, it is hereby

ORDERED that defendants motion is granted and the complaint dismissed; and it is further

ORDERED that the Clerk enter Judgment accordingly.

ENTER.



J.S.C.

Dated: June 22, 2015
gl

Hon. Charles M. Troia
Justice of the Supreme Court

GRANTED

JUN 25 2015

STEPHEN J. FIALA