SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 08-01398

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

ROBIN E. BELLASSAI AND ROSARIO BELLASSAI,
PLAINTIFFS-APPELLANTS,

V MEMORANDUM AND ORDER

ROBERTS WESLEYAN COLLEGE, DEFENDANT-RESPONDENT.

ROBERTS WESLEYAN COLLEGE, THIRD-PARTY PLAINTIFF,

V

SODEXHO MARRIOTT MANAGEMENT, INC., THIRD-PARTY
DEFENDANT-RESPONDENT.

FINUCANE AND HARTZELL, LLP, PITTSFORD (LEO G. FINUCANE OF COUNSEL), FOR PLAINTIFFS-APPELLANTS.

LAW OFFICE OF LAURIE G. OGDEN, ROCHESTER (LOUISE A. BOILLAT OF COUNSEL), FOR DEFENDANT-RESPONDENT.

FIX SPINDELMAN BROVITZ & GOLDMAN, P.C., FAIRPORT (ROY Z. ROTENBERG OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT.

Appeal from an order and judgment (one paper) of the Supreme Court, Monroe County (Thomas A. Stander, J.), entered August 22, 2007 in a personal injury action. The order and judgment granted the motions of defendant and third-party defendant for summary judgment and dismissed the complaint.

It is hereby ORDERED that the order and judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action to recover damages for injuries sustained by Robin E. Bellassai (plaintiff), an employee of third-party defendant, when she slipped and fell on the wet floor of a dining hall on defendant's campus. We conclude that Supreme Court properly granted the motion of defendant, joined in by third-party defendant, for summary judgment dismissing the complaint. Those parties met their " 'burden of establishing that [defendant] did not create the dangerous condition that caused plaintiff to fall and did not have actual or constructive notice thereof' " (*Wesolek v Jumping Cow Enters., Inc.*, 51 AD3d 1376, 1377; *see generally Fasolino v Charming Stores*, 77 NY2d 847; *Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838). "Plaintiffs' speculation with respect

to the source of the [wetness] and the length of time it was on the floor is insufficient to raise a triable issue of fact" to defeat the motions (*Anthony v Wegmans Food Mkts., Inc.*, 11 AD3d 953, 954). Further, defendant's alleged " 'general awareness' that a dangerous condition may be present [on the floor in the area of plaintiff's fall] is legally insufficient to constitute notice of the particular condition that caused plaintiff's fall" (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969; *see generally Gallais-Pradal v YWCA of Brooklyn*, 33 AD3d 660; *Palermo v Roman Catholic Diocese of Brooklyn, N.Y.*, 20 AD3d 516). For the same reason, there is no merit to plaintiffs' further contention that a prior lawsuit concerning a slip-and-fall allegedly caused by wetness in a different portion of the dining hall several years before plaintiff's accident was sufficient to provide notice of the condition at issue in this case.

Entered: February 11, 2009

JoAnn M. Wahl
Clerk of the Court