

# Actual Knowledge In A Slip And Fall Case May Be Established By Prior Accidents Or Prior Complaints

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November 7, 2019 | by Amanda Clark

On October 23, 2019, the Appellate Division in Jacob v. Marlboro Gastroenterology, (A-0031-18T2), an unpublished opinion, reversed the decision of the trial court granting summary judgment as to the negligence of a building owner, holding that the owner was on sufficient notice that a floor was dangerously slippery, but failed to remediate the condition. In addition, the Appellate Division affirmed the decision of the trial court granting summary judgment as to a cleaning company holding that Plaintiff failed to present sufficient evidence of negligence.

In this [personal injury](#) case, Plaintiff slipped on a hallway floor while on her way to obtain medicine for a physician. The subject building was owned by Defendant, Marlboro Gastroenterology, PC (hereinafter “Marlboro”). Marlboro leased the space to Plaintiff’s employer. Defendant, Peter Garbera (hereinafter “Garbera”) operated the company responsible for maintenance of the floors.

Plaintiff alleged that the hallway where she slipped and fell had been slicker than usual for several days prior to the subject incident. Plaintiff further alleged that a patient complained to her that she slipped and nearly fell on the floor. Plaintiff allegedly told Sandy O’ Brien, the assistant to Marlboro’s office manager, that the floor was hazardous and may have been over-waxed. O’Brien allegedly told Plaintiff that she would inform her boss, Sarah Weiner (hereinafter “Ms. Weiner”). Thereafter, a physician allegedly complained about the floor which prompted Plaintiff to speak with Ms. Weiner herself. Ms. Weiner allegedly told Plaintiff that she would bring this matter to Garbera’s attention. Thereafter, Plaintiff slipped and struck her shoulder on a scale as she fell to the floor. Both Ms. Weiner and Garbera testified during their depositions that there were no complaints regarding the floor. Garbera additionally testified that his employees did not wax the floors and that he did not keep or maintain records of the persons assigned to clean the floors around the time of Plaintiff’s fall or of the products utilized.

Plaintiff alleged that Garbera and Marlboro negligently created, allowed or maintained a dangerous condition. Defendants moved for summary judgment arguing that Plaintiff failed to establish that there was a dangerous condition. Defendants argued that Plaintiff lacked evidence to prove the floor was over-waxed as well as evidence identifying what made the floor slippery. Defendants further argued that Plaintiff needed an expert to establish that the condition of the floor was hazardous.

The trial court agreed that Plaintiff failed to present sufficient evidence that the floor was over-waxed, to identify the cause of the hazardous condition and to present an expert to establish a breach of reasonable standards of care in the application of cleaning products. The trial court reasoned that negligence may not be inferred merely from the fact that an accident has occurred. The trial court further held that *res ipsa loquitur* did not apply. As a result, the trial court granted summary judgment in favor of Garbera and Marlboro.

On appeal, with respect to Garbera, the Appellate Division held that Plaintiff failed to satisfy her burden to prove negligence. Of particular concern to the Court was the lack of evidence that the floor was indeed over-waxed. The Court noted that Plaintiff did not observe and did not provide any other proof that the floor was waxed. The Court also noted that Plaintiff was required to present proof regarding the origin of the slippery condition in order to hold Garbera liable. The Court reasoned that Plaintiff's evidence against Garbera was so one-sided that Garbera prevailed as a matter of law. The Court further rejected Plaintiff's *res ipsa loquitur* argument concluding that slipping on a floor, alone, does not bespeak negligence. As such, the Appellate Division affirmed the grant of summary judgment as to Garbera.

The Court reached a different conclusion as to Marlboro and held that **actual knowledge** may be established by prior accidents or prior complaints. The Court reasoned that, after granting Plaintiff all favorable inferences, Marlboro was on notice that the floor was hazardous prior to the subject accident since two people aside from Plaintiff complained that the floor was hazardous and one person almost fell. In addition, the Court concluded that an expert was not required to establish same. Therefore, the Appellate Division concluded that Marlboro was not entitled to summary judgment. As a result, the order dismissing the case as to Marlboro was reversed and the matter was remanded to the trial court.