Westlaw.



63 A.D.3d 679, 880 N.Y.S.2d 351, 2009 N.Y. Slip Op. 04380
**(Cite as: 63 A.D.3d 679, 880 N.Y.S.2d 351)**

**C**

Supreme Court, Appellate Division, Second Department, New York.
Maria HAYDEN, appellant,
v.
WALDBAUM, INC., respondent.
June 2, 2009.

**Background:** Customer brought action against store owner to recover for injuries sustained when she tripped and fell after her foot became caught under edge of rubber mat located in store's vestibule. The Supreme Court, Queens County, Rosengarten, J., entered summary judgment in owner's favor, and customer appealed.

**Holding:** The Supreme Court, Appellate Division, held that owner did not have constructive notice of defective mat.

Affirmed.

West Headnotes

**[1] Negligence 272 ⚷1095**

272 Negligence
272XVII Premises Liability
272XVII(D) Breach of Duty
272k1095 k. Slips and Falls in General. Most Cited Cases
To impose liability upon defendant in trip-and-fall action, there must be evidence that defendant either created condition or had actual or constructive notice of it.

**[2] Negligence 272 ⚷1089**

272 Negligence
272XVII Premises Liability
272XVII(D) Breach of Duty
272k1087 Knowledge or Notice in General
272k1089 k. Constructive Notice. Most Cited Cases
Defendant has constructive notice of defect when it is visible and apparent, and has existed for sufficient length of time before accident that it could have been discovered and corrected.

**[3] Negligence 272 ⚷1104(5)**

272 Negligence
272XVII Premises Liability
272XVII(D) Breach of Duty
272k1100 Buildings and Structures
272k1104 Floors
272k1104(5) k. Rugs, Carpets and Mats. Most Cited Cases
Store owner did not have constructive notice of defective rubber mat in store's vestibule, and thus was not liable for personal injuries sustained by customer when she tripped and fell after her foot became caught under edge of mat, where store's manager inspected vestibule area 50 to 60 times each day, porters swept vestibule area three or four times each day, and graft under bottom of mat affixed it to tile floor below, but manager never received any complaints that mat would lift or "bubble up."

****351** Mallilo & Grossman, Flushing, N.Y. (Steven Barbara of counsel), for appellant.

Boeggeman, George & Corde, P.C., White Plains, N.Y. (Cynthia Dolan of counsel), for respondent.

ROBERT A. SPOLZINO, J.P., FRED T. SANTUCCI, ARIEL E. BELEN, and PLUMMER E. LOTT, JJ.

***679** In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Rosengarten, J.), dated December 9, 2007, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

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The plaintiff allegedly tripped and fell when her foot became caught under the edge of a rubber mat which was located in a vestibule of the defendant's store. The plaintiff testified at her deposition that a portion of the mat had "bubbled up," though she did not trip on the "bubbled up" portion of the mat.

[1][2] To impose liability upon a defendant in a trip-and-fall action, there must be ****352** evidence that the defendant either created the condition or had actual or constructive notice of it (*see Denker v. Century 21 Dept. Stores, LLC,* 55 A.D.3d 527, 866 N.Y.S.2d 681). A defendant has constructive notice of a defect when it is visible and apparent, and has 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 N.Y.2d 836, 501 N.Y.S.2d 646, 492 N.E.2d 774).

[3] Here, the defendant sustained its initial burden of demonstrating its entitlement to judgment as a matter of law, by submitting deposition testimony of the store's manager that he inspected the vestibule area 50 to 60 times each day and that porters swept the vestibule area three or four times each day (*cf. Arzola v. Boston Props. Ltd. Partnership,* ---- A.D.3d ----, 880 N.Y.S.2d 352 [decided herewith] ). The store manager further testified that he ***680** never received any complaints that the mat would lift or "bubble up" and that "graft" under the bottom of the mat affixed it to the tile floor below. In opposition to the motion, the plaintiff failed to raise a triable issue of fact as to whether the defendant created a dangerous condition with regard to the mat or had actual or constructive notice of such condition (*see Denker v. Century 21 Dept. Stores, LLC,* 55 A.D.3d 527, 866 N.Y.S.2d 681). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

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