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1. [*Navedo v. 250 Willis Ave. Supermarket, 290 A.D.2d 246*](#)

Client/Matter: -None-

Search Terms: Navedo v. 250 Willis Avenue 290 AD2d 246

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Navedo v. 250 Willis Ave. Supermarket

Supreme Court of New York, Appellate Division, First Department

January 8, 2002, Decided ; January 8, 2002, Entered

5511

Reporter

290 A.D.2d 246 *; 735 N.Y.S.2d 132 **; 2002 N.Y. App. Div. LEXIS 126 ***

Awilda Navedo, Appellant, v. 250 Willis Avenue Supermarket, Doing Business as Pioneer Supermarket, Respondent.

had established that production of an accident report prepared by the manager was essential to justify opposition to the motion and the supermarket had failed to produce the accident report.

Core Terms

store manager, defense motion, supermarket, neighbor, cleaned, puddle, constructive knowledge, admissible evidence, actual knowledge, hearsay evidence, slip and fall, manager's, overheard, triable

Outcome

The appeals court reversed the order, denied the supermarket's motion for summary judgment, and reinstated the complaint.

LexisNexis® Headnotes

Case Summary

Procedural Posture

Plaintiff customer sued defendant supermarket for damages arising from a slip and fall accident which occurred when the customer was pushing her cart in the household products aisle and slipped on a puddle of liquid detergent on the floor. A Bronx County Supreme Court (New York) order granted the supermarket's motion for summary judgment dismissing the complaint. The customer appealed.

Overview

The customer and a neighbor testified at their examinations before trial that each overheard the store manager tell a store employee that the puddle should have been cleaned up prior to the accident. The neighbor testified that she heard the store manager acknowledge that he had instructed the employee to clean it up. That testimony evidenced the supermarket's actual knowledge prior to the accident. The store manager's alleged statements fell within the principal/agent admission exception to the hearsay rule and were, therefore, competent evidence on the issue of whether the supermarket had actual notice. The customer submitted sufficient admissible evidence which demonstrated the existence of triable issues of fact. The supreme court should also have denied the supermarket's motion as premature since the customer

Torts > ... > Activities & Conditions > Slip & Fall Injuries > General Overview

Torts > Premises & Property Liability > General Premises Liability > General Overview

[HN1](#) Activities & Conditions, Slip & Fall Injuries

Liability in a slip and fall case requires proof of a dangerous condition and the defendant's actual or constructive knowledge of that condition prior to the fall.

Civil Procedure > ... > Summary Judgment > Supporting Materials > General Overview

[HN2](#) Summary Judgment, Supporting Materials

Hearsay evidence may be sufficient to demonstrate the existence of a triable fact where it is not the only evidence submitted.

Evidence > Admissibility > Procedural

Matters > Rulings on Evidence

Torts > Premises & Property Liability > General
Premises Liability > General Overview

[HN3](#) **Procedural Matters, Rulings on Evidence**

A store manager's statement is admissible on the issue of whether a defendant store had actual knowledge of an allegedly hazardous condition.

Business & Corporate Law > Agency
Relationships > Authority to Act > General Overview

Torts > Vicarious Liability > Agency
Relationships > General Overview

[HN4](#) **Agency Relationships, Authority to Act**

A manager has the authority to bind its employer by an admission made as agent on behalf of the employer.

Counsel: **[***1]** For Plaintiff-Appellant: Edward C. Lehman.

For Defendant-Respondent: Lowell D. Aptman.

Judges: Concur--Tom, J.P., Andrias, Rubin, Buckley, Friedman, JJ.

Opinion

[*246] **[**132]** Order, Supreme Court, Bronx County (Joseph Giamboi, J.), entered October 5, 2000, which granted defendant's motion for summary judgment dismissing the complaint, unanimously reversed, on the law, without costs, the motion denied and the complaint reinstated.

This is an action for damages arising from a slip and fall accident **[*247]** which occurred when plaintiff was pushing her cart in the household products aisle at **[**133]** defendant's supermarket and slipped on a puddle of liquid detergent on the floor. Plaintiff and a neighbor testified at their examinations before trial that each overheard the store manager tell a store employee that the puddle should have been cleaned up prior to the accident. The neighbor testified that she heard the store manager acknowledge that he had instructed the employee to "clean that awhile ago." The IAS court granted defendant's motion to dismiss on the ground

that there **[***2]** was no admissible evidence that defendant had actual or constructive knowledge of the puddle. [HN1](#)  Liability in a slip and fall case requires proof of a dangerous condition and the defendant's actual or constructive knowledge of that condition prior to the fall (see, e.g., [Fasolino v Charming Stores](#), 77 N.Y.2d 847). [HN2](#)  Hearsay evidence may be sufficient to demonstrate the existence of a triable fact where it is not the only evidence submitted (see, [Guzman v L.M.P. Realty Corp.](#), 262 A.D.2d 99, 100; [Koren v Weihs](#), 201 A.D.2d 268, 269). [HN3](#)  A store manager's statement is admissible on the issue of whether a defendant store had actual knowledge of an allegedly hazardous condition ([Carpenter v D'Agostino Supermarkets](#), 270 A.D.2d 51). Here, plaintiff and her neighbor both overheard the manager advising the porter that he should have cleaned up the spill earlier, evidencing actual knowledge prior to the accident. **[***3]** [HN4](#)  A manager has the authority to bind its employer by an admission made as agent on behalf of the employer (see, e.g., [Bransfield v Grand Union Co.](#), 24 A.D.2d 586, *affd* 17 N.Y.2d 474; [Loschiavo v Port Auth. of N.Y. & N.J.](#), 86 A.D.2d 624, *affd* 58 N.Y.2d 1040; [Kasper v Buffalo Bills of W. N.Y.](#), 42 A.D.2d 87, 92). The alleged statements of the store manager, although hearsay, fall within the principal/agent admission exception and are, therefore, competent evidence on the issue of whether defendant supermarket had actual notice. Assuming that defendant met its burden of proof on the motion, plaintiff submitted sufficient admissible evidence which demonstrated the existence of triable issues of fact.

Even without consideration of the hearsay evidence of the store manager's statements, defendant's summary judgment motion should have been denied. Other deposition testimony established that the store manager was present, that he responded to the accident and that his duties included filing out accident reports. The manager apparently spoke with plaintiff and took **[***4]** down her answers. Plaintiff demanded production of any report created by the manager and defendant stipulated to produce such a report. Defendant did not, however, produce any report. The IAS court should have denied **[*248]** defendant's motion as premature since plaintiff had established that production of such report was essential to justify opposition to the motion ([CPLR 3212 ff](#); see, [Petrell v Victory Mkts.](#), 283 A.D.2d 955; [Esposito v Metropolitan Transp. Auth.](#), 264 A.D.2d 370).

Concur--Tom, J.P., Andrias, Rubin, Buckley and Friedman, JJ.

290 A.D.2d 246, *248; 735 N.Y.S.2d 132, **133; 2002 N.Y. App. Div. LEXIS 126, ***4

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