STATE OF NEW YORK
COURT OF APPEALS

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GREGORY MORRISON,

Plaintiff-Appellant,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant-Respondent.

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Mo. No.: 2022-857

Appellate Division, First Department, Docket No: 2022-01770

AFFIRMATION IN OPPOSITION

Return Date: December 19, 2022

DIANA NEYMAN, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following pursuant to CPLR §2106:

1. I am a member of the law firm of Cullen and Dykman LLP, attorney for the Defendant-Respondent, NEW YORK CITY HOUSING AUTHORITY, (hereinafter "Respondent" or "NYCHA"), and as such am fully familiar with the facts and circumstances of the above captioned action based upon a review of the file maintained by our office.

RELIEF REQUESTED BY THE APPELLANT MUST BE DENIED

2. I respectfully submit this affirmation in opposition to Plaintiff-Appellant's motion for leave to appeal to the New York State Court of Appeals the decision of the Appellate Division, First Department, entered on October 25, 2022, affirming the order of Supreme Court, New York County, Honorable Paul A. Goetz, granting summary judgment in favor of the Respondent NYCHA.

3. It is respectfully submitted that the Plaintiff-Appellant's motion must be

denied in its entirety as there is no basis that warrants review of the decision of the Appellate Division, First Department ("Appellate Division" or "First Department") to the Court of Appeals.

COUNTER STATEMENT OF FACTS

4. In the interests of judicial economy, the Respondent shall rely on the facts as set forth in its Respondent's Brief, annexed herewith as Exhibit "1", and upon the decision of the Appellate Division, annexed herewith as Exhibit "2".

ARGUMENT

POINT I

THERE IS NO BASIS FOR REVIEW BY THE COURT OF APPEALS

5. The order of the Appellate Division finally determined the action; however, it is not appealable as of right as there was no dissent on a question of law in favor of the Appellant taking the appeal, and the order of the Appellate Division did not involve constitutional grounds, nor was it from an order granting a new trial or hearing. *See*, CPLR 5601. There is no dispute with respect to same.

6. New York Civil Practice Law and Rules ("CPLR") 5602(a) provides that an appeal from a final order of an Appellate Division, which is not appealable as of right, may be taken to the Court of Appeals by permission of the Appellate Division or of the Court of Appeals. *See*, NY CPLR 5602(a).

7. Whether moving in the Appellate Division or the Court of Appeals, the

movant must provide a direct and concise argument showing why the question(s) presented merit review by the Court of Appeals. The basis for review by the Court of Appeals include novel issues of law, issues of public importance, a ruling that conflicts with a prior decision of the Court of Appeals, and a conflict among the departments of the Appellate Divisions. *See*, 22 NYCRR Part 500.22(b)(4).

8. The Plaintiff-Appellant herein does not submit any argument that review by the Court of Appeals involves a novel issue of law, issues of public importance, that the First Department's ruling conflicts with a prior decision of the Court of Appeals or that there is a conflict among the departments of the Appellate Divisions. The only argument that the Plaintiff-Appellant submits in support of the instant request for leave to appeal is that the First Department made two "legal errors" or "two errors of law" when it held that (1) NYCHA met its burden in showing lack of notice and that (2) the Plaintiff-Appellant failed to demonstrate an issue of fact through NYCHA's Building Inspection Reports as to "unsatisfactory conditions" of the staircase treads because the reports did not identify the subject staircase. *See*, Plaintiff-Appellant's Affirmation in Support at parags. 7 and 1.

9. However, in support of such argument, the Plaintiff-Appellant fails to demonstrate what "legal errors" or "errors of law" the Appellate Division committed and simply attempts to re-argue his underlying appeal which was fully briefed and considered by the Appellate Division, First Department. This is contrary to the aim of

this Honorable Court's review and the Plaintiff-Appellant should not be allowed a second (or third) bite of the apple in his repeated attempts to defeat NYCHA's underlying motion for summary judgment.

10. The Plaintiff-Appellant does not set forth any other grounds for his motion for leave to appeal to the Court of Appeals and none should be considered by this Honorable Court.

A. With respect to the Plaintiff-Appellant's argument regarding Ms. Santos' affidavit, the Appellant fails to set forth any grounds for the Court of Appeals review of the Appellate Division's decision

11. With respect to the Plaintiff-Appellant's argument concerning Mr. Santos' affidavit submitted in English in support of NYCHA's underlying motion for summary judgment, such argument is improper for a motion for leave to appeal to the Court of Appeals, as it seeks to re-argue the merits and the factual findings made by the Appellate Division, First Department, in connection with the underlying decision.

12. The findings made by the Appellate Division, First Department, in its decision were within the scope of the Appellate Division's jurisdiction, and do not fall within the review of the Court of Appeals. *See,* 22 NYCRR Part 500.22(b)(4).

13. Further, the Appellant fails to set forth any precedent of this Court with which the decision of the Appellate Division, First Department, allegedly conflicts in connection with the Appellant's argument concerning Mr. Santos' affidavit submitted in English.

14. Contrary to the Appellant's argument, the Appellate Division correctly disregarded the Appellant's argument based on Mr. Santos' affidavit, as same was irrelevant to NYCHA establishing its *prima facie* burden on summary judgment.

15. Irrespective of whether Mr. Santos' affidavit was deemed in proper and admissible form, being executed in English, the information contained in Mr. Santos' affidavit simply confirmed the information that he previously provided during his deposition which he gave in Spanish, and the admissibility of which Plaintiff-Appellant never submitted any objection and same is unobjectionable. As during his deposition, Mr. Santos affirmed in his affidavit that he followed the Janitorial Schedule for the Baruch Houses development and that he inspected and cleaned the staircases of the subject building pursuant to that schedule twice a day, including on the day of the alleged accident, with the last time being before he left for the day, at 4:30 p.m. *See,* Record on Appeal, at pp. 455-56, 689, 692, 695.

16. Therefore, even if both the Lower Court and the Appellate Division had deemed Mr. Santos' affidavit submitted in English inadmissible, same would have had no impact on the outcome of NYCHA's underlying motion or the subsequent appeal. With or without Mr. Santos' affidavit, NYCHA met its *prima facie* burden in demonstrating that it had no constructive notice of the alleged transitory condition occurring after NYCHA's last inspection of the location and after NYCHA's personnel left for the day.

17. It is thus respectfully submitted that with respect to the Appellant's argument based on Mr. Santos' affidavit, the Plaintiff-Appellant has failed to demonstrate that leave to appeal to the Court of Appeals is warranted as the Appellant does not set forth and there are no prior decisions of this Court which are in conflict with the decision of the Appellate Division, First Department.

B. Appellant fails to set forth any grounds for the Court of Appeals review with respect to the Appellant's argument based on NYCHA's Building Inspection Reports

18. Similarly, the Plaintiff-Appellant's argument based on NYCHA's Building Inspection Reports is another attempt at re-argument of the legal and factual findings made by the Appellate Division, which is improper and do not fall within the review of the Court of Appeals. *See,* 22 NYCRR Part 500.22(b)(4).

19. In its decision of October 25, 2022, the Appellate Division found that the Appellant failed to raise an issue of fact, "as the building inspection reports neither indicate specific staircases or floors with unsatisfactory conditions nor set forth the specific nature of the unsatisfactory condition." In coming to this decision, the Appellate Division relied on the case of Julia D. v. New York City Housing Authority, 181 A.D.3d 409 (1st Dep't 2020). In connection with that holding, the Appellant does not submit any argument that the Appellate Division's decision conflicted with this Court's precedent or there is a conflict between departments with respect to that issue.

20. On the contrary, the Appellate Division's decision was consistent with

numerous precedents from various departments on the issue of whether "general awareness" of an alleged transitory condition is sufficient to demonstrate constructive notice of the specific condition in question, and in all of these cases, the Appellate Courts have found that it was not. *See*, Julia D. v. New York City Housing Authority, 181 A.D.3d 409 (1st Dep't 2020); Serrano v. Haran Realty Co., 234 A.D.2d 86, 650 N.Y.S.2d 236 (1st Dep't 1996); Durney v. New York City Transit Authority, 249 A.D.2d 213 (1st Dep't 1998) (holding that the Transit Authority did not have constructive notice of urine puddles in a subway station, on which the plaintiff was caused to slip and fall, simply because the Transit Authority was aware of homeless people occupying and frequenting the station); Pagan v. New York City Housing Authority, 172 A.D.3d 888, 101 N.Y.S.3d 168 (2d Dept., 2019)(affirming lower court's granting of NYCHA's motion for summary judgment where plaintiff did not present any evidence that NYCHA was aware of a recurring dangerous condition of urine on the steps in the specific area of the stairwell where she fell, only that NYCHA had a general awareness that there was frequent urine in that stairwell).

21. Therefore, the decision of the Appellate Division was consistent and in harmony with the aforesaid precedents, when it found that the Appellant failed to raise an issue of fact as to the NYCHA's constructive notice of the alleged condition based on his argument relating to the Building Inspection Reports.

C. There are no novel issues of law or issues of public importance to be addressed by the Court of Appeals

22. The Appellant does not submit any argument that the Appellate Division's decision involves any novel issues of law or issues of public importance. Moreover, there is no basis for such an argument in the present matter as the Appellate Division's decision was based on well-established legal precedents, all cited and incorporated by reference herein from the Respondent's Brief and as cited to by the Appellate Division in its decision.

23. As there are no valid bases for the Court of Appeals to exercise jurisdiction over this matter, the Appellant's motion for leave to appeal to the Court of Appeals should be denied.

POINT II

APPELLANT'S MOTION IS PROCEDURALLY DEFECTIVE AND MUST BE DENIED OUTRIGHT

24. In addition, the Plaintiff-Appellant's motion for leave to appeal to the New York Court of Appeals is deficient in that it does not contain the entirety of the Appellate Division, First Department decision from which the Plaintiff-Appellant seeks leave to appeal. Review of the Plaintiff-Appellant's motion reveals that only the first page was annexed and the second page of the decision is missing.

25. The Plaintiff-Appellant's failure to annex the complete copy of the decision in question is fatal and his application must be denied outright. *See,* In re

Clynes' Estate, 249 A.D. 904 (1937).

CONCLUSION

24. For the foregoing reasons, the Appellant's motion for leave to appeal to the Court of Appeals must be denied in its entirety.

Dated: New York, New York
December 15, 2022

DIANA NEYMAN

CERTIFICATION

Pursuant to 22 N.Y.C.R.R. 130.1-1a, the undersigned, an attorney admitted to practice in the Courts of the State of New York, certifies that, upon information and belief, and after reasonable inquiry, the contentions contained in the within Affirmation in Opposition are not frivolous.

Dated: New York, New York
December 15, 2022

DIANA NEYMAN

Exhibit 1

To Be Argued By:
DIANA NEYMAN, ESQ.
Time Requested: 15 Minutes

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION: FIRST DEPARTMENT

GREGORY MORRISON,

Plaintiff-Appellant,

Appellate Division
Docket No.: 2022-01770

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant-Respondent.

BRIEF FOR DEFENDANT-RESPONDENT, NEW YORK CITY HOUSING AUTHORITY

APPELLATE COUNSEL:

CULLEN AND DYKMAN LLP
Attorneys for Defendant-Respondent
NEW YORK CITY HOUSING AUTHORITY
44 Wall Street
New York, New York 10005
(212) 732-2000
dneyman@cullenllp.com
kbuffaloe@cullenllp.com

LEAHEY & JOHNSON, P.C.
Attorneys for Defendant-Respondent
NEW YORK CITY HOUSING AUTHORITY
120 Wall Street, Suite 2220
New York, New York 10005
(212) 269-7308
mdempsey@leaheyandjohnson.com

Supreme Court, New York County Clerk's Index No. 153970/2019

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COUNTER STATEMENT OF QUESTIONS PRESENTED

I. Whether the Lower Court providently granted the Defendant-Respondent New York City Housing Authority's (hereinafter "NYCHA" or "Defendant-Respondent") motion for summary judgment pursuant to CPLR 3212, where the Defendant-Respondent established its entitlement to summary judgment by submitting evidence that it inspected and cleaned the staircase in question pursuant to a Janitorial Schedule and did not have actual or constructive notice of the alleged transitory condition of a slippery substance on a step, occurring after NYCHA's personnel had left for the day.

This question must be answered in the affirmative.

II. Whether the Lower Court providently found that Plaintiff-Appellant's argument in opposition to NYCHA's motion for summary judgment that the New York City Housing Authority's Building Inspection Reports, which did not contain any mention of the specific alleged transitory slippery condition or of the specific alleged accident location, did not constitute notice of the specific condition?

This question must be answered in the affirmative.

III. Whether the Lower Court providently found that Plaintiff-Appellant's argument in opposition that the affidavit from NYCHA's witness, Mr. Amados Santos, is inadmissible because it was executed in English, where Mr. Santos is an

English-speaking individual and where the contents of his affidavit are identical to his deposition testimony given in Spanish, was a feigned issue.

This question must be answered in the affirmative.

IV. Whether the Lower Court providently found that Plaintiff-Appellant failed to raise an issue of fact or law in opposition to Defendant-Respondent's motion for summary judgment where Plaintiff-Appellant relied on a new theory of liability never plead before and introduced for the first time in opposition to the Defendant-Respondent's motion through an expert affidavit, which contained unreliable and speculative findings lacking in probative value.

This question must be answered in the affirmative.

COUNTER STATEMENT OF FACTS

Prior to commencement of the action, Plaintiff-Appellant served NYCHA with a Notice of Claim, setting forth allegations that on May 16, 2018, at approximately 8:00 p.m., at 120 Baruch Drive, New York, New York 10002, Plaintiff-Appellant slipped and fell on the first step while descending from the 6th floor toward the 5th floor. Plaintiff-Appellant alleged that he was caused to slip and fall as a result of a "dangerous, unsafe and hazardous condition located at the above location consisting of liquid on steps, including but not limited to water and other liquid". [R 43-44].

As to allegations of negligence, Plaintiff-Appellant's Notice of Claim set forth numerous allegations pertaining to ownership, operation, inspection, supervision, cleaning, maintenance, control and repair of the aforesaid stairwell, including permitting and allowing to remain dangerous, unsafe, slippery, wet, and hazardous condition on the steps, in permitting and allowing water and other liquids to pool and accumulated on the steps, and in connection with same "having a floor without an adequate coefficient of friction". [R 43-46].

Upon commencement of the action, however, Plaintiff-Appellant's Complaint did not set forth any allegations pertaining to a "floor without an adequate coefficient

of friction" nor was there a claim asserted that paint created an insufficient coefficient of friction. [R 169-76].

After commencing this action against NYCHA, Plaintiff-Appellant served his Verified Bill of Particulars, again alleging that he suffered personal injuries when he slipped and fell on May 16, 2018, at approximately 8:00 p.m., while walking down the stairs from the 6th floor to the 5th floor in the subject building. [R 231]. With respect to the critical issue of notice, although Plaintiff-Appellant claimed actual and constructive notice of the condition, he provided no specifics as to those allegations. [R 234]. At no time, did Plaintiff-Appellant supplement his Bill of Particulars to provide any further details concerning these allegations.

As to allegations of negligence, Plaintiff-Appellant's Bill of Particulars was identical to allegations contained in the Notice of Claim, with the exception of the allegation of "having a floor without an adequate coefficient of friction", which however vague and overbroad, was not asserted and omitted in the Bill of Particulars. [R 232-33]. Plaintiff-Respondent did not set forth any allegation of statutory violations in his Bill of Particulars. [R 243].

Plaintiff-Appellant testified at a GML §50-h Statutory Hearing as well as at a deposition on November 2, 2018 and September 16, 2020, respectively. During both, Plaintiff-Appellant testified that on May 16, 2018, at approximately 8:00 p.m., he came to the building of 120 Baruch Drive, New York, New York to visit a friend

named "Ricky" who resided in Apartment 6B, on the 6th floor of the building. [R 75-76, 516, 539, 549]. At the statutory hearing, Plaintiff-Appellant testified that he had never been inside the subject building before May 16, 2018. [R 78, 559-60]. When Plaintiff-Appellant arrived at the subject building that evening, he took the elevator upstairs to the 6th floor, where "Ricky's" apartment was located. [R 78, 541]. Plaintiff-Appellant testified that when he arrived at "Ricky's" apartment door, an unknown male down the hall told him that "Ricky" had moved out of the apartment. [R 75-76, 79, 541]. Plaintiff-Appellant further testified that when he decided to go downstairs, he did not want to wait for the elevator and instead proceeded to the stairs. [R 86, 541, 550]. Plaintiff-Appellant testified that the lights in the staircase were working on May 16, 2018 and they were sufficient for Plaintiff-Appellant to see where he was walking. [R 98-99, 558, 560].

Plaintiff-Appellant also testified that 120 Baruch Drive had 13 floors [R 538-39] and two stairwells, leading from the top floor down to the lobby. The Plaintiff-Appellant testified that the staircases were numbered and that he took the staircase to his right of the elevator on the 6th floor, which might have been staircase "60". [R 83-85, 555].

Plaintiff-Appellant also described that as he started to descend the steps from the 6th floor, he did not observe any liquids on the subject stairs before he fell despite looking forward. [R 107, 561, 563-64, 567]. He testified that after he fell, it must

have been "something slippery", but did not know what it was and assumed it was something slippery because his foot "gave way" and "other than that, I wouldn't have fell". [R 101, 106, 108-09, 563-64, 571]. He first observed this unknown slippery condition after he fell and saw it only on one step but did not know on which step. [R 107-09]. Plaintiff also testified that other than that one step, there was nothing of a slippery nature on either the 6th floor landing or on any other step leading from the 6th floor to the 5th floor landing. [R 108-09]. He did not have any liquid on any of his clothes after the fall either. [R 109].

On November 19, 2019, NYCHA served a Response to Plaintiff-Appellant's combined discovery demands, containing the following records: (1) copies of the Supervisor of Caretakers logbooks for the subject building for the period from May 2017 through May 2018; (2) a copy of the Janitorial Schedule that was in effect on May 16, 2018; (3) the Monthly Building Inspection Reports for the subject building for the period from July 2016 through May 2018; and (4) Work Orders for the subject building for the period from September 2016 through May 2018. [R 255-486]. None of these records, spanning a two-year period prior to the alleged accident, contained any mention of, complaints of, or any evidence of liquids or any slippery substance on the subject staircase. [R 255-486].

On March 4, 2021, Caretaker "J" Amado Santos appeared and testified on behalf of NYCHA at a deposition conducted by Plaintiff-Appellant. Mr. Santos

testified at his deposition that he has been employed by NYCHA for the past 30 years and was assigned to work at the Baruch Houses as a Caretaker in May 2018. [R 688-89, 690]. Mr. Santos testified that he worked five days a week from 8:00 a.m. until 4:30 p.m. [R 692]. He also testified that his job duties as a Caretaker "J" included cleaning the subject building and that he would thoroughly clean the building including the stairs in the subject building every Tuesday and Wednesday and also "everyday if they were wet or something." [R 689, 695].

Mr. Santos testified that the subject building had two staircases and that he would typically clean one of the staircases on Tuesdays and the other staircase on Wednesdays, from approximately 1:00 p.m. to 3:30 p.m. on those days. [R 705-06]. Mr. Santos testified that he would use a mop to clean and dry the subject stairs, and he would put out warning signs indicating a wet floor. [R 694, 696]. Mr. Santos also testified that there were no NYCHA workers in the subject building in the evenings. [R 706].

Mr. Santos' testimony was corroborated by the NYCHA Janitorial Schedule for the Baruch Housing development. [R 455-56]. The Janitorial Schedule directed caretakers to conduct walk downs of each stairwell from the roof to the lobby each day starting from 8:00 a.m. to 8:15 a.m., and to immediately report any hazardous conditions to a supervisor. [R 455]. Caretakers use a deck brush and a mop to clean the stairwell landings and the steps from the roof to the 1st floor landing each

Wednesday from 12:30 p.m. to 2:30 p.m. [R 456]. Caretakers also conduct another walk down of the buildings each day from 3:30 p.m. to 4:15 p.m. [R 456].

In addition to the deposition testimony of Mr. Santos, Defendant-Respondent also submitted an Affidavit executed by Mr. Amado Santos in support of its motion for summary judgment, attesting to the Janitorial Schedule and reiterating that he followed the NYCHA Janitorial Schedule for the Baruch Housing development by mopping the stairwells and inspecting the staircases twice a day, with the last one between 3:30 p.m. and 4:15 p.m. each day before leaving for the day. [R 726-27].

In opposition to NYCHA's summary judgment, for the first time, Plaintiff-Appellant introduced a new theory of liability through an expert affidavit of Mr. Stanley Fein, which had not been previously disclosed and where Mr. Fein submitted that he inspected the steps on October 12, 2020 (nearly 2.5 years after the alleged accident) and that the gray unidentified paint on the steps created a low coefficient of friction, making steps slippery and in violation of ASTM D-2047 and F-1637 and Underwriters Laboratories (hereinafter "UL") 410 standards. [R 777].

In addition, in opposition to NYCHA's underlying motion for summary judgment, Plaintiff-Appellant relied on NYCHA's monthly Building Inspection Reports, spanning approximately 2 years prior to the alleged accident date, some of which indicated that steps & threads were "unsatisfactory". The reports did not contain mention of the specific condition that was referred to as "unsatisfactory",

not even whether same was structural or transitory, and did not mention any specific location within this 13-story building containing two stairwells as to where steps and tread were "unsatisfactory". [R 457-84].

Finally, Plaintiff-Appellant argued in opposition that the affidavit submitted by Caretaker "J" Mr. Santos in support of NYCHA's motion for summary judgment was inadmissible because it was executed in English, while Mr. Santos testified through a Spanish interpreter during his deposition. [R 765-766].

In reply, NYCHA responded directly to Plaintiff-Appellant's arguments read in opposition to NYCHA's motion for summary judgment and did not submit any new argument on reply. With respect to Plaintiff-Appellant's argument based on Mr. Fein's affidavit, NYCHA correctly pointed out that same was introduced as a new theory of liability not previously alleged either in the Notice of Claim or Bill of Particulars. NYCHA also argued that Plaintiff-Appellant's opposition based on the Building Inspection Report was nothing more than a "general awareness" of a condition of the steps and treads, but not sufficient as notice of the specific transitory condition of a slippery substance on a specific step within one specific stairwell of the building in question. Lastly, NYCHA also argued that Mr. Santos' affidavit was not required to be executed in Spanish, as Mr. Santos was both a Spanish and an English speaker and was able to communicate effectively with his counsel in English sufficiently to understand the information contained in the affidavit. In addition, Mr.

Santos' affidavit does not contain any new information and all that is set forth in his affidavit was already testified to during his deposition, specifically performance of his duties according to the Janitorial Schedule including inspection and cleaning of the stairs pursuant to same. [R 783-98].

The Lower Court granted NYCHA's motion for summary judgment on liability, as it correctly found that NYCHA met its *prima facie* burden with respect to lack of notice of the alleged transitory condition which arose after NYCHA's personnel had left for the day, and that Plaintiff-Appellant failed to raise a triable issue of fact when he tried to introduce a new theory of liability through the opinion of his expert. The Lower Court also correctly disregarded Plaintiff-Appellant's remaining arguments as well. [R 9].

Based on the arguments and law submitted herein, the Lower Court correctly found that NYCHA was entitled to summary judgment in this case and that Plaintiff-Appellant failed to raise any triable issue of fact or law in opposition to same. Similarly, in connection with the present appeal, Plaintiff-Appellant has failed to demonstrate that the Lower Court erroneously granted NYCHA's motion for summary judgment, warranting upholding of the Lower Court's decision in its entirety.

ARGUMENT

POINT I

THE LOWER COURT CORRECTLY FOUND THAT NYCHA MET ITS BURDEN ON SUMMARY JUDGMENT AND THAT PLAINTIFF-APPELLANT FAILED TO DEMONSTRATE A TRIABLE ISSUE OF FACT IN OPPOSITION

In support of his appeal herein, Plaintiff-Appellant argues that NYCHA failed to meet its prima facie burden on summary judgment based on (1) the Building Inspection Reports pre-dating the accident and which the Plaintiff-Appellant claims allegedly demonstrated NYCHA's knowledge of "unsatisfactory treads"; and (2) that the affidavit of NYCHA's Caretaker "J" Mr. Santos was improperly offered in support of NYCHA's motion in English and without "certification that it was interpreted to, or even understood, by him" when he used a Spanish Interpreter at his deposition. Both of these arguments are a red herring, without any support in applicable fact or law, and are insufficient to rebut NYCHA's showing in connection with its underlying motion for summary judgment.

A). NYCHA's Building Inspection Reports do not demonstrate NYCHA's knowledge of the specific condition at the specific location and constitute mere "general awareness" of "unsatisfactory" condition of the steps and treads within the building overall

As an initial matter, Plaintiff-Appellant erroneous represents that NYCHA's Building Inspection Reports of May, 2018, May, 2017, December, 2016 and July 7,

2016 are Building Inspection Reports "for the *specific* stairwell between 6th and 5th floors". *See,* Appellant's Brief, at page 7, Point I, A. Review of the NYCHA Building Inspection Reports reveals that same is an incorrect representation and is not supported by the Record.

Plaintiff-Appellant testified at his statutory hearing and deposition that the building of 120 Baruch Drive had 13 floors and two staircases "A" and "B", leading from the top floor down to the lobby. [R 538-39, 555]. Review of the Building Inspection Reports reveals that they were not designed and do not contain any indication as to specific staircases or floors within the subject building. Therefore, there is no indication that the notation therein that the steps & treads were "unsatisfactory" pertained to the specific staircase or the floor within the building where the claimed accident alleged to have occurred.

In addition, the notations within some of the Building Inspection Reports that the steps & treads were "unsatisfactory" do not contain a description of the condition that was found to be "unsatisfactory" meaning that the Building Inspection Reports do not set forth whether the condition was of structural nature or transitory, and if the latter, and in either case there is no mention of the specific nature of the "unsatisfactory" condition.

Therefore, the notations within the Building Inspection Reports at most constituted a "general awareness" of an unsatisfactory condition of the steps and/or

treads, but not of the specific transitory slippery condition involved in the alleged accident herein at the specific location alleged herein. Same is insufficient to constitute notice of the transient condition of a "wet" or "slippery" substance alleged herein. *See*, Julia D. v. New York City Housing Authority, 181 A.D.3d 409 (1st Dep't 2020) (the affidavit of the infant's grandmother that she complained of urine on the steps and that she saw urine in stairwell A between 10th and 11th floors for two or three days prior to the accident demonstrated only that the defendant had a general awareness of the problem and no evidence was presented that the puddle of urine that caused plaintiff's fall was the same condition that her grandmother observed, given the caretaker's testimony of a reasonable cleaning schedule); *see, also,* Serrano v. Haran Realty Co., 234 A.D.2d 86, 650 N.Y.S.2d 236 (1st Dep't 1996); Durney v. New York City Transit Authority, 249 A.D.2d 213 (1st Dep't 1998) (holding that the Transit Authority did not have constructive notice of urine puddles in a subway station, on which the plaintiff was caused to slip and fall, simply because the Transit Authority was aware of homeless people occupying and frequenting the station); Pagan v. New York City Housing Authority, 172 A.D.3d 888, 101 N.Y.S.3d 168 (2d Dept., 2019) (affirming the lower court's granting of NYCHA's motion for summary judgment where plaintiff did not present any evidence that NYCHA was aware of a recurring dangerous condition of urine on the steps in the specific area of the stairwell where she fell, only that NYCHA had a general awareness that there

was frequent urine in that stairwell).

As the Building Inspection Reports contained no pertinent information concerning notice of the specific slippery condition alleged herein, NYCHA did not "wait until reply to address and reconcile its BIR records" as Plaintiff-Appellant argues. In its reply to the underlying motion, NYCHA simply responded to Plaintiff-Appellant raising a feigned issue based on the Building Inspection Reports, which was insufficient to raise an issue of fact as a matter of law, and with which the Lower Court agreed.

In addition, NYCHA submitted other evidence including the testimony and affidavit of Caretakers "J" Amados Santos, and the building Janitorial Schedule to establish lack of notice of the specific alleged condition, which established that NYCHA followed a reasonable cleaning and inspection schedule for the building and staircase in question and that the alleged slippery condition would not have been left unaddressed while NYCHA's personnel was on duty and before leaving for the day. [R 455-56, 689, 695].

In connection with his present appeal, Plaintiff-Appellant does not rebut or address in any way NYCHA's argument that the Building Inspection Reports constituted only a "general awareness" and were not sufficient to constitute evidence of notice of a specific alleged slippery condition.

Therefore, it is respectfully submitted that Plaintiff-Appellant's argument

based on the Building Inspection Reports is insufficient to raise a triable issue of fact with respect to the issue of lack of notice of the alleged condition, and the Lower Court properly disregarded Plaintiff-Appellant's argument based on same.

B). Plaintiff-Appellant's argument regarding Mr. Santos' affidavit executed in English is not supported by applicable law and is a feigned issue insufficient to rebut NYCHA's showing of entitlement to summary judgment.

In support of his argument, Plaintiff-Appellant sets forth that NYCHA's Caretaker "J" Mr. Santos testified at his deposition in Spanish but in support of NYCHA's motion for summary judgment, he submitted an affidavit in English that contains no certification that "it was interpreted to, or even understood, by him and is not in competent evidentiary form". This argument is not supported by case law and again represents a feigned issue insufficient to rebut NYCHA's showing in connection with its underlying motion for summary judgment.

In support of this argument, Plaintiff-Appellant relies on unreported decision of the lower court in Leon-Vazquez v. Benjamin, 2017 N.Y. Misc. LEXIS 7782 (N.Y. Sup. Ct., Jan. 9, 2017), a copy of which Plaintiff-Appellant does not submit to this Court for review and which is not controlling law herein, as well as on a decision in Eustaquio v. 860 Cortland Holdings, Inc., 95 A.D.3d 548, 944 N.Y.S.2d 78 (1st Dept., 2012) that is completely distinguishable and inapplicable herein.

In Eustaquio v. 860 Corland Holdings, Inc., 95 A.D.3d 548, 944 N.Y.S.2d 78 (1st Dept., 2012), the statement by the foreman of plaintiff's non-party employer was

prepared by a private investigator, and the private investigator's affidavit stated that the foreman's daughter had translated the statement from Greek to English. However, the statement was not accompanied by an attestation from the daughter setting forth her qualifications and the accuracy of the translation.

The circumstances of Eustaquio are distinguishable from the present case, as in that case the foreman was not an English speaker and therefore, required a translation, which should have been accompanied by an attestation from the translator. Here, although Mr. Santos requested a Spanish Interpreter for purposes of deposition, same did not preclude the fact that he is also an English speaker. Mr. Santos testified that has been employed by NYCHA for the past 30 years in various capacities. [R 688-89], this extended employment involving communication with other NYCHA personnel as well as tenants, demonstrates Mr. Santos' ability to communicate in English. In addition, counsel for NYCHA represented that he met with Mr. Santos on November 4, 2021 and conversed with him in English to discuss the contents of his affidavit and the development's Janitorial Schedule. At that meeting, Mr. Santos demonstrated with an understanding of English sufficient to understand the information contained in his affidavit, without need for any translation, and that same was true to his best knowledge. [R 796-97].

Therefore, unlike in Eustaquio, Mr. Santos' affidavit did not require a translator's attestation, having been drafted, reviewed, understood and affirmed in

English without need for a Spanish translator. Same was appropriate, regardless of Mr. Santos choice to speak at a deposition through a Spanish interpreter, pursuant to Ortiz v. Food Mach. of Am., Inc., 125 A.D.3d 507, 5 N.Y.S.3d 8 (1st Dept., 2015) (holding that the witness's affidavit is in English and the defendant's counsel represented that the witness, an Italian citizen, speaks English and communicated with counsel in English concerning the drafting of the affidavit, therefore rendering the affidavit admissible).

Furthermore, the information contained in Mr. Santos' affidavit simply reiterates and confirms the information that he previously provided during his deposition, which Plaintiff-Appellant does not and cannot have any objection as to the admissibility. As during his deposition, Mr. Santos affirmed in his affidavit that he acted in accordance with and followed the Janitorial Schedule for the Baruch Houses development and that he inspected and cleaned the staircases of the subject building pursuant to that schedule twice a day, including on the day of the alleged accident, with the last time being before he left for the day, at 4:30 p.m. [R 455-56, 689, 692, 695], as such the affidavit is consistent with Mr. Santos' sworn testimony.

Therefore, Plaintiff-Appellant's argument as to admissibility of Mr. Santos' affidavit is contrary to the applicable case law. In addition, irrespective of admissibility of Mr. Santos' affidavit, the information contained within Mr. Santos' affidavit was already before the Lower Court as part of Mr. Santos' deposition to

which there is not and cannot be an objection from Plaintiff-Appellant. Thus, Plaintiff-Appellant's argument as to Mr. Santos' affidavit is a red herring and should be disregarded by this Appellate Court, as the Lower Court has properly done in granting NYCHA's motion for summary judgment.

POINT II

THE LOWER COURT PROPERLY FOUND THAT PLAINTIFF-APPELLANT FAILED TO DEMONSTRATE AN ISSUE OF FACT BY IMPROPERLY ATTEMPTING TO INTRODUCE A NEW THEORY OF LIABILITY THROUGH AN AFFIDAVIT OF HIS ENGINEER WHICH CONTAINED UNRELIABLE AND SPECULATIVE FINDINGS

Plaintiff-Appellant submitted the affidavit of an engineer, Mr. Stanley Fein, prepared specifically in opposition to NYCHA's motion for summary judgment, setting forth new allegations of negligence based on a purported insufficient coefficient of friction allegedly created by the paint on the stairs in question and violations of ASTM D-2047 and F-1637 or UL 410 standards. These allegations were never set forth in the Plaintiff-Appellant's Notice of Claim or Bill of Particulars, and therefore, impermissibly constitute new theories of liability which cannot be used to rebut NYCHA's showing on a motion for summary judgment.

In his appeal, Plaintiff-Appellant now argues that his Notice of Claim contained a claim of inadequate coefficient of friction, and that renders his theory submitted as part of Mr. Fein's affidavit as an existing theory of liability. However,

this argument is in error.

Review of Plaintiff-Appellant's Notice of Claim reveals that Plaintiff-Appellant alleged that he was caused to slip and fall as a result of dangerous, unsafe and hazardous condition consisting of liquid on the steps, including but not limited to water and other liquids. [R 43-46]. In connection with that allegation, Plaintiff-Appellant alleged that NYCHA was negligent in "having a floor without an adequate coefficient of friction", meaning that the floor was slippery because of the alleged presence of liquid and/or slippery substance and not due to paint, which was not mentioned in the Notice of Claim. This reading of the Notice of Claim is supported by Plaintiff-Appellant's testimony during the statutory hearing and his deposition, his Complaint and his Bill of Particulars, where he does not set forth any allegations pertaining to coefficient of friction of the steps nor any allegations pertaining to paint on the steps.

Further, neither the Notice of Claim or the Bill of Particulars assert any violations of ASTM or UL standards. [R 232-33, 243].

Moreover, at no time, either during his GML § 50-h statutory hearing or his deposition, did the Plaintiff-Appellant attribute the cause of his accident to the paint of the steps, and simply claimed that there was a "wet" or "slippery substance" that was allegedly involved in this accident. [R 106-07, 562-63].

Therefore, the theory of liability that Plaintiff-Appellant's engineer puts forth,

that the steps lacked the proper coefficient of friction due to presence of unidentified gray paint on the steps and that same violated ATM and UL standards after an examination of the vaguely identified accident location by Mr. Fein 2.5 years after the alleged accident is a new theory of liability that NYCHA was never given notice of and was not given an opportunity to investigate in proximity to the alleged accident date. The new theory of liability, first advanced by the Plaintiff-Appellant in opposition to NYCHA's motion for summary judgment, failed to comply with the requirements of the Public Housing Law §157(2) and was properly found insufficient to raise in issue of fact by the Lower Court.

The circumstances herein are similar to those in Monmasterio v. New York City Housing Authority, 39 A.D.3d 354, 833 N.Y.S.2d 498 (1st Dept., 2007) where, in his notice of claim, plaintiff alleged that the defendant negligently failed to "provide adequate, sufficient and operable lighting" at the scene of the incident and did refer to defendant's alleged "prior knowledge of similar criminal conduct and activity in the vicinity and location where the plaintiff was harmed". However, the Appellate Court held that this latter allegation, which appeared in the same clause of the notice of claim that specified the failure to provide adequate lighting as the basis of defendant's negligence, was not connected to any claim that defendant's negligence was a failure to provide adequate security. Thus, the crux of the notice of claim was that because defendant had knowledge of similar conduct in the

immediate vicinity and location, "adequate, sufficient and operable lighting" – not more security personnel – should have been provided. Therefore, the Appellate Court noted that the notice of claim satisfies the requirements of General Municipal Law §50-e because the information supplied is sufficient to have enabled defendant promptly and adequately investigate the claim of inadequate lighting. However, "nothing in the notice of claim would have alerted defendant to the need to investigate the number and adequacy of the security personnel it employed, and plaintiffs were not free subsequently to interject a new, distinct theory of liability without leave of court. The inadequate security claim, which differs substantially from the inadequate lighting claim, is a new, distinct theory of liability and must be dismissed". *See,* id. at 356.

In addition, the recent case of Rosado v. New York City Housing Authority, 194 A.D.3d 586 (1st Dep't 2020) is directly on point with this case as it involved the same new theory of paint on the stairs proffered by an expert affidavit which was not alleged in the plaintiff's notice of claim or Bill of Particulars and raised for the first time in opposition to defendant's motion. In Rosado, plaintiff claimed that he slipped and fell on "grease and urine" while descending a staircase in a NYCHA owned building. NYCHA moved for summary judgment on the basis of lack of notice of the transient condition. The plaintiff opposed NYCHA's motion by alleging for the first time that the stairs were slippery because "they had been

painted" and proffered an expert affidavit in support of this new claim. The lower court granted NYCHA's motion and rejected plaintiff's new theory because the new theory was not asserted in the notice of claim or the Bill of Particulars. The Appellate Division, First Department, affirmed the lower court's decision holding that "...the motion court correctly disregarded plaintiff's proffered expert report which asserted that the steps were slippery because they had been painted. This contention constituted a new theory not asserted in the notice of claim or bill of particulars and was raised for the first time in response to defendant's motion for summary judgment." Id. at 354, *citing* Monmasterio v. New York City Hous. Auth., 39 AD3d 354).

Similarly, in Villar v. New York City Housing Authority, 193 A.D.3d 625, 142 N.Y.S.3d 812 (1st Dep't 2021), the plaintiff claimed that she slipped and fell on a "wet" condition on stairs in a NYCHA owned building. NYCHA moved for summary judgment on the ground of lack of notice. The plaintiff opposed the motion and proffered an expert's affidavit. The lower court granted NYCHA's motion for summary judgment. The Appellate Division, First Department, affirmed the lower court's decision and ruled that NYCHA established its *prima facie* entitlement to summary judgment by demonstrating that NYCHA did not have notice of the alleged wet condition. The First Department further ruled that the plaintiff failed to create a triable issue of fact when she improperly attempted to introduce a new theory of

liability through an expert's opinion. Id.

In Nicholas v. New York City Housing Authority, 65 A.D.3d 925 (1st Dep't 2009), the plaintiff claimed that he slipped and fell on a "wet" condition on an internal stairway inside a NYCHA owned building. NYCHA moved for summary judgment on the ground of lack of notice. The plaintiff opposed NYCHA's motion and proffered affidavits from an expert and the plaintiff in which a new theory was asserted namely, that the plaintiff slipped due to a defective condition of the step nosing. The lower court denied NYCHA's motion but the Appellate Division, First Department, reversed and dismissed the complaint. The First Department ruled that the plaintiff had improperly attempted to assert a new theory of liability in opposition to NYCHA's motion which the trial court should have rejected. Id.

Similarly in the present case, Plaintiff-Appellant's allegation in the Notice of Claim of "having a floor without an adequate coefficient of friction", alleged in connection with presence of unidentified slippery condition on the floor, would not have alerted NYCHA to the need to investigate a claim related to the paint on the steps or violations of ASTM and UL standards, which differ substantially from claims of an alleged presence of an liquid slippery substance on the steps. Therefore, Mr. Fein's affidavit setting forth claims based on coefficient of friction of paint on the steps presents a new theory of liability that was raised for the first time in opposition to NYCHA's motion for summary judgment which the Lower Court

properly rejected and found insufficient to raise a triable issue of fact.

Thus, since the facts and legal issues in Monmasario, Rosado and the cases cited *supra* are virtually identical to this instant case and the First Department's rulings therein are directly on point and should control the outcome of this appeal as well. Following Monmasario and Rosado, this Court must also reject Plaintiff-Appellant's new theory of "paint on the stairs" and Mr. Fein's affidavit because they improperly attempt to introduce a new theory of liability.

Furthermore, the affidavit of Mr. Stanley Fein submitted in opposition to NYCHA's motion lacked in probative value, as it contained unreliable, speculative conclusory findings, that the Lower Court properly disregarded.

In his affidavit, Mr. Fein averred that he inspected the subject staircase two and a half years after the alleged accident. He allegedly inspected the staircase between the sixth and the fifth floors and "specifically the first step down from the sixth floor landing". [R 777]. However, the photograph annexed to Mr. Fein's affidavit and purportedly depicting the area that he inspected does not reflect the first step down from the 6th floor landing, but shows an unknown and unidentified staircase and what appears to be an intermediate landing. There is no indication that the photograph depicts the first step from the 6th floor landing at the premises in question. [R 779]. Therefore, there is no indication that Mr. Fein tested the alleged accident location, especially considering that Plaintiff-Appellant did not know the

specific step on which his alleged accident occurred. [R 107-09].

In addition, Mr. Fein affirmed that he tested the staircase under "wet condition[s]". [R 777] However, he does not set forth what those wet conditions were and does not provide any information as to simulated conditions that he created in order to come up with his coefficient of friction and his conclusion. There is no indication in Mr. Fein's affidavit that he did not create a condition that, in fact, constituted a hydroplane condition on the steps, and which would have artificially lowered the coefficient of friction of any floor. Similarly, Mr. Fein did not identify the type of the "gray paint" that he observed on the steps and does not render an opinion as to how such gray paint rendered the coefficient of friction lower than that allegedly required. Mr. Fein does not even consider in this affidavit that the gray paint may be an approved floor paint that is specifically designed for painting of floors so that the paint does not cause or contribute to any slippery condition. Further, Mr. Fein fails to address the issues created by the passage of time and wear and tear from years of use since the alleged accident date and how, if at all, he accounts for same in reaching his conclusion. All these conclusory and speculative statements and findings, combined with the fact that Plaintiff-Appellant himself did not know what type of slippery substance was involved in his accident, rendered Mr. Fein's findings completely unreliable and without probative value. *See,* Smith v. Town of Brookhaven, 45 A.D.3d 567, 846 N.Y.S.2d 203 (2d Dept., 2007); Cuevas

v. City of New York et al., 32 A.D.3d 372, 821 N.Y.S.2d 37 (1st Dept., 2006); Science Applications International Corporation v. Environmental Risk Solutions, LLC, 37 Misc. 3d 1202(A), 964 N.Y.S.2d 62 (Sup. Ct. Albany, 2012); Hambsch v. New York City Transit Authority, 63 N.Y.2d 723, 480 N.Y.S.2d 195 (1984).

Mr. Fein's affidavits and testimony has been previously rejected by various appellate and New York State Courts on similar grounds. That is, setting forth unreliable and speculative opinions, without any support in evidence or a scientific basis. *See*, Jones v. City of New York, 32 A.D.3d 706, 707 (1st Dep 2006) (appellate division reversed denial of summary judgment, finding that "Fein did not offer any supporting data ..., nor did he identify any particular professional or industry standard to substantiate his assertion" of negligence); Parker v. Board of Governors, 2015 NY Slip Op 32036(U) (Sup Ct, NY Cty, 2015) (summary judgment granted to defendant where Mr. Fein's affidavit found to be inadmissible speculation that failed to raise a question of fact); Lara v. Delta International Machinery Corp, 174 F.Supp3d 719, 738 (E.D.N.Y. 2016) (in rejecting Mr. Fein's affidavit, the court described it as "bottomed upon nothing more than mere speculation and guesswork" and the court was also troubled by Mr. Fein's "sweeping conclusions"); Gahn v. Community Props., 33 Misc 3d 1213(A) (Sup Ct, Nassau Cty, 2011) (summary judgment granted to defendant where the court found Mr. Fein's affidavit to have mischaracterized a compilation of reference standards); Mejia v. ERA Realty Co.,

2008 NY Slip Op 31543(U) (Sup Ct, Nassau Cty, 2008) (summary judgment granted to defendant where Mr. Fein's affidavit was found to contain "bare conclusory allegations" that were "insufficient to raise a triable issue of fact"); Ifill-Colon v. 153 E. 149th Realty Corp., 2015 NY Slip Op 31898(U) (Sup Ct, Bronx Cty, 2015) (summary judgment granted in favor of defendant where Mr. Fein's affidavit was found to be based upon mere conjecture and without any probative value); Greco v. Pisaniello, 2014 NY Slip Op 33257(U) (Sup Ct, Bronx Cty, 2014) (summary judgment granted in favor of defendant where Mr. Fein's opinions were found to be unsupported by any outside sources and lacking in evidentiary foundation, and where he failed to identify any particular section, guideline, or standard for his assertions); Gettas v. 332-336 East 77th St. Assoc., 2005 NY Slip Op 30483(U) (Sup Ct, New York Cty, 2005) (summary judgment granted in favor of defendant where Mr. Fein provided no authority for his conclusion that the underlying floor should have a minimum "measured coefficient of friction," and he provided insufficient evidence for his conclusion that defendant possessed notice of a hazard); Parris v. Jewish Bd. of Family & Children Services, Inc., 2020 NY Slip Op 31068(U) (Sup Ct, New York Cty, 2015) (summary judgment granted to defendant where Mr. Fein's affidavit contained no supporting measurements and failed to cite a controlling statute or code); Rosenberg v. City of Long Beach, 2009 NY Slip Op 30931(U) (Sup Ct, Nassau Cty, 2009) (summary judgment granted to defendant, and Mr. Fein's

opinion rejected as "pure speculation," where he neither inspected the location of the accident, nor provided any supporting empirical data); Caputo v. Amedeo Hotels LP, 2011 NY Slip Op 32935(U) (New York Cty, 2011) (summary judgment granted to defendants where Mr. Fein's affidavit was found to be unsupported by any data and otherwise amounted to bare conclusory assertions); Tanton v. Lefrak SBN Ltd. Partnership, 2013 NY Slip Op 30126(U) (New York Cty, 2013) (summary judgment, along with costs and disbursements, awarded to defendant where Mr. Fein's affidavit found to be built upon guesswork and speculation); Samuels v. Lee, 2016 NY Slip Op 31023(U) (New York Cty, 2016) (summary judgment granted to defendant where Mr. Fein's opinion lacked probative value); Torres v. Nine-O-Seven Holding Corp., 2014 NY Slip Op 31465(U) (Nassau Cty, 2014) (summary judgment, along with costs and disbursements, awarded to defendant where Mr. Fein's opinion was found to constitute "unsupported and unsubstantiated speculation").

Based on controlling case law set forth *supra* and the facts herein, the Lower Court properly held that Plaintiff-Appellant failed to rebut NYCHA's *prima facie* showing in support of its motion for summary judgment by improperly attempting to submit a new theory of liability for the first time in opposition to NYCHA's motion for summary judgment through affidavit of Stanley Fein, which also lacked in any probative value. The Lower Court's decision therefore must be upheld.

CONCLUSION

The Lower Court properly granted NYCHA's underlying motion for summary judgment, where NYCHA met its burden and established that it did not create or have notice of the alleged slippery condition and had proper a reasonable inspection and cleaning routine in place to address such conditions. In opposition, Plaintiff-Appellant only asserted feigned issues related to NYCHA's Building Inspection Reports and the affidavit of NYCHA's caretaker, and the improperly attempting to introduce a new theory of liability not previously alleged, based on unreliable and speculative affidavit of an engineer. Based on these considerations, the Lower Court's decision granting NYCHA's motion for summary judgment must be upheld in its entirety.

Respectfully Submitted,

CULLEN AND DYKMAN LLP

BY: Diana Neyman

DIANA NEYMAN, ESQ,
Attorneys for Defendant-Respondent,
NEW YORK CITY HOUSING AUTHORITY
44 Wall Street
New York, New York 10005
(212) 732-2000

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CERTIFICATION

Pursuant to 22 N.Y.C.R.R. 130.1-1a, the undersigned, an attorney admitted to practice in the Courts of the State of New York, certifies that, upon information and belief, and after reasonable inquiry, the contentions contained in the within Brief are not frivolous.

Dated: New York, New York
August 10, 2022

Diana Neyman
DIANA NEYMAN

Exhibit 2

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Kennedy, Scarpulla, Mendez, Higgitt, JJ.

16542 GREGORY MORRISON,
Plaintiff-Appellant,

-against-

NEW YORK CITY HOUSING AUTHORITY,
Defendant-Respondent.

Index No. 153970/19
Case No. 2022-01770

Wiese & Aydiner PLLC, Mineola (Si Aydiner of counsel), for appellant.

Cullen & Dykman LLP, New York (Diana Neyman of counsel), for respondent.

Order, Supreme Court, New York County (Paul A. Goetz, J.), entered on or about April 20, 2022, which granted defendant's motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

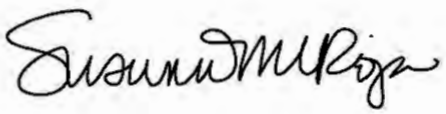
Plaintiff slipped and fell on a wet or slippery substance on a stairway of an apartment building he was visiting. Defendant established entitlement to judgment as a matter of law by submitting evidence showing that it did not have constructive notice of the alleged condition. Defendant demonstrated that on the day of plaintiff's accident, it had a proper and reasonable inspection and cleaning routine in place to address such conditions (*see Hobbs v New York City Hous. Auth.*, 168 AD3d 634, 635 [1st Dept 2019]).

In opposition, plaintiff failed to raise an issue of fact, as the building inspection reports neither indicate specific staircases or floors with unsatisfactory conditions nor set forth the specific nature of the unsatisfactory condition (*see Julia D. v New York*

City Hous. Auth., 181 AD3d 409, 410 [1st Dept 2020]). Although plaintiff's expert did not, as defendant and the court found, raise a new theory of negligence regarding the claim of inadequate coefficient of friction; the expert nonetheless failed to raise an issue of fact to rebut defendant's prima facie showing that it neither created nor had notice of the transient condition of a wet or slippery substance at the specific incident location and that it followed a proper and reasonable inspection and cleaning schedule (*see Villar v New York City Hous. Auth.*, 193 AD3d 625, 625-626 [1st Dept 2021]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 25, 2022



Susanna Molina Rojas
Clerk of the Court

6946-1560
Morrison

AFFIDAVIT OF SERVICE - REGULAR MAIL

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

REBECCA MITCHELL, being duly sworn, deposes and says that I am not a party in this action,II am over the age of eighteen and reside in Kings County, New York.

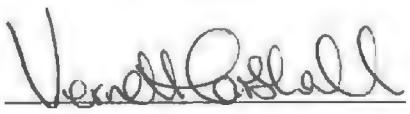
That on the **15th day of December 2022** I served **ONE COPY OF** the within **AFFIRMATION IN OPPOSITION** as follows:

PULVERS, PULVERS & THOMPSON, LLP
Attorneys for Plaintiff
141 Willis Avenue
New York, New York 11501
(212) 471-5108

by depositing true copies thereof in properly sealed postpaid addressed wrappers, in a post office/official depository under the exclusive care and custody of the United States Postal Service within the State of New York addressed as above that/ those being the address(es) designated by them for the purpose upon the latest papers served by them in this action.

REBECCA MITCHELL

Sworn to before me this
15th day of December 2022



NOTARY PUBLIC

VERNELL KELLY MARSHALL
Notary Public, State of New York
No. 01MA6348667
Qualified in Kings County
My Commission Expires 10/03/20_25

Appellate Division Docket No: 2022-01770
Mo. No.: 2022-857

STATE OF NEW YORK
COURT OF APPEALS

GREGORY MORRISON,

Plaintiff- Appellant,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant-Respondent.

AFFIRMATION IN OPPOSITION

Diana Neyman, Esq.
One Battery Park Plaza, 34th Floor
New York, New York 10004
(212) 732-2000 (Tel)
Our File No.: 6946-1560

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