

Megginson v New York City Hous. Auth.

2016 NY Slip Op 32354(U)

December 2, 2016

Supreme Court, New York County

Docket Number: 152279/13

Judge: Jennifer G. Schechter

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 CLIFTON MEGGINSON,

DECISION AND ORDER
 Index No. 152279/13

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant,

-----X
 JENNIFER G. SCHECTER, J.:

Pursuant to CPLR 3212, defendant the New York City Housing Authority (NYCHA) moves for summary judgment dismissing the action against it. Plaintiff Clifton Megginson opposes the motion. The motion is denied.

Background

On or about 9:30 p.m. on Monday, October 1, 2012, plaintiff was injured after he slipped on something wet in a dark interior stairwell between the second and third floors in a building located at 21 Seaver Avenue in Staten Island (Building) (Affirmation in Support [Aff Supp], Ex B [Complaint] at ¶¶ 11-14, Ex D at ¶¶ 1-2, E at 27-28, 97). The Building is part of a housing development owned and operated by NYCHA. At the time of the incident, plaintiff was visiting his then-girlfriend Yehern Hutchinson, who lived on the third floor (Aff Supp at ¶ 2, Ex E at 11-12). In 2013, Megginson commenced this personal-injury action against NYCHA.

NYCHA moves for summary judgment, urging that the action should be dismissed because plaintiff does not know what he

slipped on and because NYCHA neither created nor had notice of any dangerous condition in the third-floor stairwell.

Megginson Testimony

At some point during his visit, Megginson remembered that he left his wallet in the car and left Hutchinson's apartment to get it, taking the stairs (Aff Supp, Ex E at 88). He testified that it was dark in the stairwell because the third-floor landing light was not working. He recounted that he took one or two steps and then slipped down the stairs (*id.*, 93-97). Although Megginson was not sure specifically what he slipped on, he knew that it was wet (*id.* at 97).

Plaintiff alleges that the last time he had used the stairs was in September and he noticed that the light on the third-floor landing was out but did not notify NYCHA (*id.* at 39, 42, 45-46, 49). He testified that the light was "out every day at night" (*id.* at 47).

Hutchinson Testimony

Hutchinson testified that, when leaving her apartment, she would always use the stairs (Aff Supp, Ex F at 35). On the day of the incident, she ran some errands at around 1:00 p.m. (*id.* at 35-36). She testified that the stairs are "always wet; . . . its always like puddles of water" and that,

on the day of the incident, she recalled seeing these puddles of water on the third-floor landing but did not notify anyone (*id.* at 37-38, 40, 140). Hutchinson initially testified that she did not go back to the stairs until plaintiff's accident (*id.* at 42). Later in her deposition, however, she stated that she went back down the stairs at around 3:00 p.m. and again noticed water there (*id.* at 142-43).

When plaintiff fell, Hutchinson heard something and went to the stairwell but could not see anything because "it's always dark in there" and the light is "always out" (*id.* at 52-54, 56).^{*} She explained that the light on the third-floor landing is "always out Someone will come [] and fix it, but right after they fixed it it will go right back out again anyway" (*id.* at 64). When she came to plaintiff's assistance after he fell, using her cell phone as a light source, she noticed water on the landing and top three stairs (*id.* at 72).

Anderson Testimony

The Building's caretaker Shameeka Anderson testified that she has been assigned to the Building since March 2012, working Monday through Friday 8:00 a.m. through 4:25 p.m. (Aff

^{*} Ms. Hutchinson claimed to have a document signed by tenants in the Building attesting to the light being out on the third-floor landing. Through deposition testimony from some tenants, it was discovered that they either did not sign the document, did not know about the document and/or did not have any knowledge about the lighting (Aff Supp, Exs G, I, J, K).

Supp, Ex L at 8-9). At night, tenants could call emergency services if there was a problem (*id.*).

Anderson explained her practices and duties. She related that Monday mornings were particularly busy because of additional garbage and recycling (*id.* 31). After handling the garbage, Anderson would "walk the building down and sweep the building down . . . [check] for any debris, any lights out. [] If there was a light out [she] . . . would have to be told before [she went] to the building because the lights," which were on a timer, were off when she would get there (*id.* at 32).

The stairways are swept everyday that Anderson works and are mopped as needed (*id.* at 39-40). When she finishes her walk down of the Building, Anderson attends to other buildings. Upon completing work at those buildings, she returns to the Building at around 10:30 or 11:00 to clean or complete other tasks there (*id.* at 45-46). She would do another walk through of the Building if there was a complaint at around that time (*id.* at 46-47). She would then generally go back to the Building after her 12:30 break to walk it down again and see what had to be done. "[If she had to hit her] stairs, then [she would] hit [her] stairs, if not, [she would] spot mop [her] floors or . . . clean [her] elevators . . ." (*id.* at 48-49). A final walk down would be done between 3:30

and 4:15 to make sure, among other things, that there was no debris or spills, but she would not sweep again (*id.* at 49-50). She only remembered observing cigarette butts, ashes, matchbooks and "stuff" on the stairs on the day of the incident (*id.* at 76-77).

Anderson did not find out about plaintiff's accident until the day after it happened. Her supervisor told her that someone had slipped and fallen and that the light was out (*id.* at 64). She went to the stairs and did not see any water. She and her supervisor checked the light, she unscrewed the bulb, put it back in and then they checked the circuit breaker.

She recalled that the light fixture had been fixed on August 30, 2012, pursuant to a work order, because the light had been shorting out and she did not receive any complaints about the light since it was fixed (*id.* at 68-72).

Bennett Testimony

Anderson's supervisor, John Bennett, explained that his regular hours were Monday through Friday, 8:00 a.m. to 4:30 p.m. and that no NYCHA maintenance personnel would be in the Building after 4:30 p.m. on weekdays or after 1:00 p.m. on weekends (Aff Supp, Ex M at 12-19). Bennett visited the Building several times in September and October of 2012 to

ensure that janitorial standards were being met (*id.* at 40-43). When performing a full inspection, he would generate an inspection report (*id.* at 48-49). The last inspection report prior to the accident was generated on September 28, 2012 and shows that there were no problems found with the stairs or lights (*id.* at 49-55). An August 30, 2012 work ticket reflects a reported problem with the light fixture on the third-floor landing in the Building. Notes indicate that the bulb had previously been changed, but that the problem remained and a maintenance worker was needed to fix it (*id.* at 70-73, Ex N). Once the maintenance worker repaired the light fixture, the ticket was marked accordingly (*id.* at 71-72, Ex N). The Building logbook does not contain evidence of any problem with the light or any other unusual occurrence on the third-floor landing on the date of the incident. Mr. Bennett did not recall any problems with the light on the third-floor landing or any complaints about the light being out or any water condition on the stairs (*id.* at 82-83).

Building Complaints

All complaints are recorded in NYCHA's Maximo computer system. A search of the system did not turn up complaints regarding inadequate lighting or any spills on the third-floor landing or stairs of the Building for the six months prior to

the incident with the exception of the work ticket for the third-floor light (Aff Supp at ¶¶ 54-55).

Analysis

Summary Judgment is a drastic remedy that should not be granted if there is any doubt as to the existence of material triable issues (see *Glick & Dolleck v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968] [denial of summary judgment appropriate where an issue is "arguable"]; *Sosa v 46th Street Develop. LLC*, 101 AD3d 490, 493 [1st Dept 2012]). The burden, which is a "heavy one," is on the movant to make a *prima facie* showing of entitlement to judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any disputed material facts (see *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]). Once the movant has made this showing, the burden then shifts to the opponent to establish, through competent evidence, that there is a material issue of fact that warrants a trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Defendant's argument that the case should be dismissed because plaintiff does not know what he slipped on is rejected. Although there is case law dismissing actions when the injured person is altogether not sure what caused the fall, here the plaintiff knew that he slipped on something wet

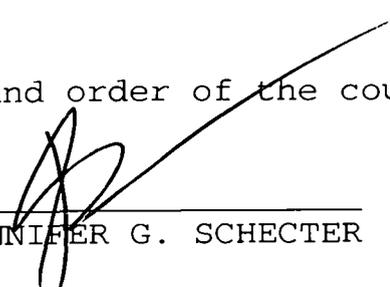
and his lack of knowledge of the composition of the liquid is immaterial (*contrast Zanki v Cahill*, 2 AD3d 197 [1st Dept 2003][no evidence of spilled substance, plaintiff only suspected the floor was wet because her sleeve was wet after she fell]; *Smith v Costco Wholesale Corp.*, 50 AD3d 499 [1st Dept 2008][no evidence of a foreign substance or liquid]).

Summary judgment must also be denied because there are questions of fact as to the witnesses' credibility and whether there was water on the stairs on the afternoon of the accident, which NYCHA had constructive notice of based on Anderson's afternoon walk downs (*Mendoza v Fordham-Bedford Housing Corp.*, 139 AD3d 578, 578-579 [1st Dept 2016]; *contrast Love v New York City Hous. Auth.*, 82 AD3d 588 [1st Dept 2011][plaintiff failed to raise a question of fact demonstrating a recurring dangerous condition routinely left unaddressed]).

Because this court's role is limited to "issue finding, not issue determination" (*see Passos v MTA Bus Co.*, 129 AD3d 481, 483 [1st Dept 2015]) and all reasonable inferences must be drawn in favor of the party opposing the motion, it is ORDERED that defendant's motion for summary judgment is denied.

This constitutes the decision and order of the court.

Dated: December 2, 2016



HON. JENNIFER G. SCHECTER