

Williams v 150 RFT Varick Corp.

2013 NY Slip Op 31242(U)

June 6, 2013

Supreme Court, NY County

Docket Number: 109855/2010

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 109855/2010
WILLIAMS, TAURENCE
vs.
150 RFT VARICK
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) _____
Answering Affidavits — Exhibits _____ No(s) 2
Replying Affidavits _____ No(s) 3

Upon the foregoing papers, it is ordered that this motion is

FILED
JUN 11 2013
NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 6/6/13



J.S.C.
HON. EILEEN A. RAKOWER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 15

Justice

TAURANCE WILLIAMS,

Plaintiff,

- v -

150 RFT VARICK CORP. D/b/a GREENHOUSE,

Defendant.

INDEX NO. 109855/2010

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were filed in this motion for/to

FILED

JUN 17 2013

NEW YORK COUNTY CLERK'S OFFICE

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1

Answer — Affidavits — Exhibits _____

2

Replying Affidavits _____

3

Cross-Motion: Yes No

Taurance Williams (“Plaintiff”) brings this action to recover for personal injuries allegedly sustained when he tripped and fell at The Greenhouse nightclub located at 50 Varick Street, New York, New York (“the premises”) at approximately 11:30 p.m. on August 25, 2009. Defendant 150 RFT Varick Corp. d/b/a Greenhouse (“Defendant”) moves for summary judgment pursuant to CPLR §3212.

Plaintiff is a hair stylist who resides in West Orange, New Jersey. The complaint alleges that Defendant owned, maintained, and/or operated the night club where Plaintiff’s injury allegedly occurred.

Plaintiff asserts that he had been attending a “cast wrap up party” held by his employer at Defendants premises and was proceeding to exit when he tripped and fell over a raised edge of a metal plate that was loosely secured to the floor and obstructed by a hanging drape. Plaintiff alleges that Defendant failed to

adequately illuminate the metal plate and floor surface forming a trap and nuisance constituting a dangerous and unsafe condition.

Defendant submits: the second amended complaint, the verified answer to the amended verified complaint, the verified bill of particulars, a photograph of the area where Plaintiff allegedly fell, this court's compliance conference orders, deposition testimony of Plaintiff's workers compensation claim, Plaintiff's medical records, an affidavit from Mathis Van Leyden the Director of VIP services at Greenhouse, and the expert affidavit of Michael Kravitz, P.E., a Civil and Forensic Engineer.

In opposition, Plaintiff attaches: the affidavit of merits of Plaintiff, photographs of the area where Plaintiff allegedly fell, the deposition of Mathis Van Leyden, the director of VIP services for Defendant, responses to Plaintiff's demands, notice of exchange of expert information, the note of issue filed on September 13, 2012, and the amended verified complaint.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

The question of "whether a dangerous or defective condition exists on the property of another so as to create liability... is generally a question of fact for the jury." (*Trincere v. County of Suffolk*, 90 NY2d 976, 688 NE2d 489, 655 NYS2d 615 [1997]). "Property owners (and tenants) may not be held liable for trivial defects, not constituting a trap or nuisance, over which a pedestrian might merely stumble, stub his or her toes, or trip." (*Milewski v. Washington Mut., Inc.*, 88 AD3d 853, 931 NYS2d 336 [2011]). "Generally, whether a dangerous or defective condition exists depends on the particular facts of each case, and is properly a question of fact for the jury unless the defect is trivial as a matter of

law. (*Milewski v. Washington Mut., Inc.*, 88 AD3d at 855). Defects do not have to be a certain minimum height or depth to be actionable. (See, *Trincere v. County of Suffolk*, 90 NY2d at 978). Instead, courts are to examine all of the facts, including the measurements and appearance of the defect, “along with the ‘time, place and circumstance[s] of the injury’” (*Trincere v. County of Suffolk*, 90 NY2d at 978). Photographs of a defect which fairly and accurately reflect how it appeared on the date of the accident may be used to demonstrate whether it is trivial. (See, *Shenpanski v. Promise Deli, Inc.*, 88 AD3d at 984).

The amended complaint asserts that the metal plate over which Plaintiff fell was “loosely secured” to the floor and “obscured and obstructed by a hanging drape”. It further states that the “aforementioned occurrence was the result of the negligence of [Greenhouse]... in permitting and allowing the aforementioned exit entranceway... to be, become and remain in a dangerous and unsafe condition, the same forming a trap and nuisance and constituting a danger, menace and hazard to persons in the said premises; in obstructing and obscuring the trap and in so creating a hidden trap; in failing to adequately affix and secure the metal plate to the floor; in failing to secure the metal plate so as to be flush with the surrounding floor surface... “ Plaintiff states in his deposition “there was an, I don’t know what you call it, I think I called it is a lift or a step in the doorway or something that caught my toe as I went to go out and caused me to trip and fall.” He describes this “lift or step” as a metal material. He states that after he walked into the premises, he noticed how this same metal “lift or step” which he fell on was “catching on some of the ladies’ heels”.

The documents provided by Defendant, including the photographs dated February 8, 2012, show a narrow metal plate separating the entryway rug from the wooden floor. However, it should be noted that Plaintiff was unable to state that the pictures fairly and accurately depicted the strip on which he fell at the time he fell. “Well, this photograph is flat, so it does not depict. I don’t know how to say it. It is flat and the thing was not flat.” (Williams deposition dated February 8, 2012; page 81, line 23). The photographs are unable to demonstrate the alleged loosely secured nature of the strip such that the Court could conclude as a matter of law that they show a trivial defect.

Finally, Defendant asserts that Plaintiff has provided different reasons for his fall and therefore his action should be dismissed. After the accident, Plaintiff

executed and filed a C-3 Affidavit when he submitted his application for worker's compensation benefits. In response to the question as to "how did the injury/illness occur", he responded that he "slipped down steps" at the Greenhouse. As noted above, plaintiff states in his deposition that he was not sure if it was a "lift" or a "step" that he slipped and fell upon. In the emergency room record from St. Barnabus Hospital, Plaintiff was recorded as being injured when twisting his knee while dancing. Conflicting testimony presents questions of credibility, and questions of credibility are to be resolved by the trier of fact, not the court on a summary judgment motion. (*Torres v. Dormitory Auth. Of the State of N.Y.*, 2011 NY Slip Op 32515U [NYS Sup Ct 2011]).

Wherefore, it is hereby,

ORDERED that Defendant's motion for summary judgment is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: June 6, 2013



HON. EILEEN A. BAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FILED
 JUN 11 2013
 NEW YORK
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