

Oguzahn v Mount Sinai Hosp.
2014 NY Slip Op 31339(U)
April 30, 2014
Sup Ct, New York County
Docket Number: 100027/2011
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 46

Index Number : 100027/2011
OGUZHAN, CAVIT
vs.
MOUNT SINAI HOSPITAL AND
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

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

The following papers, numbered 1 to 4, were read on this motion ~~to~~ for Summary judgment
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1-2
Answering Affidavits — Exhibits _____ | No(s). 3
Replying Affidavits _____ | No(s). 4

Upon the foregoing papers, it is ordered ~~that this motion is~~ *and adjudged that:*
The court grants defendants' motion for summary judgment and dismisses the complaint pursuant to the accompanying decision. C.P.L.R. § 3212(b).

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

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 4/30/14

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

- 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
COUNTY OF NEW YORK: IAS PART 46

-----X

CAVIT OGUZAHN,

Index No. 100027/2011

Plaintiff

- against -

DECISION AND ORDER

MOUNT SINAI HOSPITAL and MOUNT SINAI
SCHOOL OF MEDICINE,

Defendants

-----X

I. BACKGROUND

Plaintiff seeks damages for personal injuries he sustained July 22, 2009, when he fell on an exterior step while exiting the medical facility maintained by defendants. He alleges that defendants were negligent in failing to keep their exterior stairs in a reasonably safe condition and that dangerous conditions on the staircase caused his fall. Plaintiff claims the staircase was defectively designed, constructed, and maintained, particularly in that defendants failed to provide adequate handrails in violation of the New York State and City Building Codes.

Defendants move for summary judgment, claiming plaintiff has failed to identify a hazardous condition that caused him to slip and fall on the exterior steps. C.P.L.R. § 3212(b). Defendants insist that, even if the lack of a handrail violated an applicable Building Code provision, there is no causal connection between that violation and plaintiff's fall, and his claim that his fall was attributable to the lack of a handrail is merely

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speculative.

II. STANDARDS FOR SUMMARY JUDGMENT

To obtain summary judgment, defendants must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. Id.; Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012); Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735 (2008); JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d 373, 384 (2005); Giuffrida v. Citibank Corp., 100 N.Y.2d 72, 81 (2003). Only if defendants satisfy this standard, does the burden shift to plaintiff to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004).

If defendants fail to meet their initial burden, the court must deny summary judgment despite any insufficiency in the opposition. JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d at 384; Scafe v. Schindler El. Corp., 111 A.D.3d 556, 557 (1st Dep't 2013); Romero v. Morrisania Towers Hous. Co. Ltd. Partnership, 91 A.D.3d 507, 508 (1st Dep't 2012); Chubb Natl. Ins. Co. v. Platinum Customcraft Corp., 38 A.D.3d 244, 245 (1st Dep't 2007). If upon defendants' prima facie showing, however, plaintiff fails to raise material factual issues, the court must grant defendants summary judgment. Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Morales v. D & A Food Serv., 10 N.Y.3d at 913; Romero v.

Morrisania Towers Hous. Co. Ltd. Partnership, 91 A.D.3d at 508. In evaluating the evidence for purposes of defendants' motion, the court construes the evidence in the light most favorable to plaintiff. Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004).

III. THE REPORT BY PLAINTIFF'S ENGINEER

According to the sworn report by plaintiff's expert engineer of his inspection of the premises October 5, 2010, the staircase outside defendants' building measured approximately 102 inches from a handrail on one side of the staircase to the other side, without another handrail across that entire width. Aff. of Richard P. Berkenfeld at 3-4. Plaintiff's engineer also measured the riser heights of each of the staircase's three steps across the width of the staircase and found the height of the third riser down from the landing in front of the exit doors irregular, measuring five inches on one side of the staircase and four inches on the other side. Id. at 4.

Although the engineer relies on these measurements taken during his inspection to conclude that the area where plaintiff fell was in an unsafe condition, causing his injury, no evidence establishes that the area the engineer inspected October 5, 2010, was in the same condition as when plaintiff was injured July 22, 2009, more than a year previously. Plaintiff's wife, who observed his fall on the staircase, also accompanied the engineer during his inspection, id. at 1, but neither she nor any other

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witness establishes that the area inspected was in the same condition as on the date of plaintiff's injury. Neither plaintiff nor his wife attests that only one handrail served the staircase or where any handrail was located July 22, 2009.

The engineer points to a "Property Profile Overview for the premises . . . obtained from the website of the New York City Department of Buildings" October 27, 2010, which indicates that the most recent "alteration" as of that date was June 11, 1984. Id. at 5. Even if this evidence from an official government website is admissible, it does not indicate that the premises remained in the same condition from June 1984 or even from July 2009 to October 2010. LaSonde v. Seabrook, 89 A.D.3d 132, 137 n.8 (1st Dep't 2011); L&Q Realty Corp. v. Assessor, 71 A.D.3d 1025, 1026 (2d Dep't 2010); Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D.3d 13, 20 (2d Dep't 2009). Under the New York City Building Code that the Department of Buildings implements, an "alteration" is an "addition, or change or modification of a building . . . that is not classified as a minor alteration." N.Y.C. Admin. Code § 27-232. Minor alterations are "minor changes or modifications in a building or any part thereof." N.Y.C. Admin. Code § 27-124. Plaintiff has not shown that removal of a handrail from the staircase outside defendants' building would have constituted a "change or modification of [the] building," N.Y.C. Admin. Code § 27-232, that is not a "minor" change or modification. N.Y.C. Admin. Code § 27-124. Absent the foundation that the placement of the

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handrails serving the staircase remained the same from July 22, 2009, to October 5, 2010, the court may not rely on an expert opinion based on the inspection on the later date. Santiago v. Burlington Coat Factory, 112 A.D.3d 514, 514-15 (1st Dep't 2013); Pomahac v. TrizecHahn 1065 Ave. of Ams., LLC, 65 A.D.3d 462, 466 (1st Dep't 2009); Machado v. Clinton Hous. Dev. Co., Inc., 20 A.D.3d 307 (1st Dep't 2005); Gilson v. Metropolitan Opera, 15 A.D.3d 55, 59 (1st Dep't 2005), aff'd, 5 N.Y.3d 574 (2005). See Salman v. L-Ray LLC, 93 A.D.3d 568, 569 (1st Dep't 2012).

Plaintiff's engineer nevertheless concludes that the lack of handrails not more than 88 inches apart and the irregular height of the third riser down from the landing created hazardous conditions on the premises' exterior staircase. Since plaintiff testified at his deposition that he fell on the second or middle step down from the landing while descending the three steps of the staircase, before he reached the third step down from the landing, Aff. of Rita S. Menchel Ex. C, at 31, any irregularity of the third step's riser height did not contribute to his fall. Rivera v. Bilynn Realty Corp., 85 A.D.3d 518, 518 (1st Dep't 2011).

The undisputed evidence that plaintiff did not descend the steps on the right side, so as to use the handrail available there, and the absence of evidence that he attempted to find or reach for a handrail suggest that the lack of a closer handrail also did not contribute to his fall. Robinson v. 156 Broadway Assoc., LLC, 99 A.D.3d 604, 605 (1st Dep't 2012); Ridolfi v.

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Williams, 49 A.D.3d 295, 296 (1st Dep't 2006). Yet he testified that as he exited the building door toward the stairs other persons were ascending, who may have impeded his access to the right side of the stairs. As he descended toward the left, no handrail that he might have attempted to grab was within reach. Menschel Aff. Ex. D, at 32. Had handrails been placed not more than 88 inches apart, depending on exactly where he was descending, a handrail would have been no more than 44 inches from the center of his body, or no more than approximately three feet from his side, and thus likely within his reach. Nevertheless, even drawing these inferences in his favor, and assuming the measurements of the stairs and the placement of handrails did not change between July 22, 2009, and October 5, 2010, the conditions found by plaintiff's engineer did not violate any applicable requirement of the City or State Building Code.

IV. THE INAPPLICABILITY OF THE CITY BUILDING CODE

The New York City Building Code requires that an interior staircase more than 88 inches wide include an intermediate handrail dividing the stairway. N.Y.C. Admin. Code § 27-375(f)(1); Gaston v. New York City Hous. Auth., 258 A.D.2d 220, 221-22 (1st Dep't 1999). See DeRosa v. City of New York, 30 A.D.3d 323, 326 (1st Dep't 2006). This requirement also applies to exterior stairs that "may be used as exits in lieu of interior stairs." N.Y.C. Admin. Code § 27-376; Gaston v. New York City Hous. Auth., 258 A.D.2d at 222. See Castillo v. Akdeniz Realty,

LLC, 91 A.D.3d 531, 531-32 (1st Dept 2012); DeRosa v. City of New York, 30 A.D.3d at 326. The applicability of statutory and regulatory requirements and the interpretation of what they require, here whether they required handrails on defendants' staircase, are legal questions reserved for the court's determination and not questions on which the court may consider an expert witness' opinion. Buchholz v. Trump 767 Fifth, 5 N.Y.3d 1, 7 (2005); Lopez v. Chan, 102 A.D.3d 625, 626 (1st Dep't 2013); Reyes v. Morton Williams Associated Supermarkets, Inc., 50 A.D.3d 496, 497 (1st Dep't 2008); DeRosa v. City of New York, 30 A.D.3d at 326.

The interior stairs to which the handrail requirement applies are inside a building and serve as a required exit. N.Y.C. Admin. Code § 27-232; DeRosa v. City of New York, 30 A.D.3d at 326; Maksuti v. Best Italian Pizza, 27 A.D.3d 300, 300 (1st Dep't 2006); Gaston v. New York City Hous. Auth., 258 A.D.2d at 221. Exterior stairs are "open to the outdoor air" and serve "as a required exit." N.Y.C. Admin. Code § 27-232; DeRosa v. City of New York, 30 A.D.3d at 326; Gaston v. New York City Hous. Auth., 258 A.D.2d at 221. See Lopez v. Chan, 102 A.D.3d at 626. An "exit" is a "means of egress from the interior of a building to an open exterior space which is provided by . . . interior stairs [or] exterior stairs." N.Y.C. Admin. Code § 27-232; Gaston v. New York City Hous. Auth., 258 A.D.2d at 221. See Lopez v. Chan, 102 A.D.3d at 627; Castillo v. Akdeniz Realty, LLC, 91 A.D.3d at 532; DeRosa v. City of New York, 30 A.D.3d at

326; Maksuti v. Best Italian Pizza, 27 A.D.3d at 300. An "open exterior space" is "a street, or other public space; or a yard, court, or plaza open on one or more sides and unroofed or open on all sides which provides egress to a street or public space." N.Y.C. Admin. Code § 27-232; DeRosa v. City of New York, 30 A.D.3d at 326. Exterior stairs used as an exit in lieu of interior stairs must include guards or parapets at least three feet six inches high, N.Y.C. Admin. Code §§ 27-369(f), 27-376(c); Gaston v. New York City Hous. Auth., 258 A.D.2d at 223, and must be covered by a roof. N.Y.C. Admin. Code § 27-376(c); Gaston v. New York City Hous. Auth., 258 A.D.2d at 223. Any openings in the building walls adjoining exterior stairs used as an exit in lieu of interior stairs must be protected by self-closing fire doors. N.Y.C. Admin. Code § 27-376(d); Gaston v. New York City Hous. Auth., 258 A.D.2d at 223.

As the above required components of exterior stairs used as an exit in lieu of interior stairs indicate, a "staircase . . . outside the parameters of the building," which does "not provide a means of egress from the interior to an open exterior space," Gaston v. New York City Hous. Auth., 258 A.D.2d at 224, is not exterior "stairs being used as exits in lieu of interior stairs." Id. at 223-24. See N.Y.C. Admin. Code § 27-376; Lopez v. Chan, 102 A.D.3d at 627; Castillo v. Akdeniz Réalty, LLC, 91 A.D.3d at 532. To be used as an exit "in lieu of interior stairs," the exterior stairs must serve as a required means of egress from the inside of the building to the open space outside the building.

Castillo v. Akdeniz Realty, LLC, 91 A.D.3d at 532; Gaston v. New York City Hous. Auth., 258 A.D.2d at 224. See Lopez v. Chan, 102 A.D.3d at 626-27. A staircase outside a building, such that the stairs do not provide direct egress from the interior of the building to the open exterior space where the staircase is located, is thus not subject to Administrative Code § 27-375(f)(1)'s requirements for handrails on staircases more than 88 inches wide. Castillo v. Akdeniz Realty, LLC, 91 A.D.3d at 531-32; Reyes v. Morton Williams Associated Supermarkets, Inc., 50 A.D.3d at 498; Gaston v. New York City Hous. Auth., 258 A.D.2d at 224; Sparrock v. City of New York, 219 A.D.2d 705, 706 (2d Dep't 1995). See Lopez v. Chan, 102 A.D.3d at 627; DeRosa v. City of New York, 30 A.D.3d at 326.

The staircase depicted in three photographs authenticated at the deposition of plaintiff's wife, who observed his fall on the staircase, Menchel Aff. Ex. C, at 52, Ex. G, at 2; Leon v. Alcor Assoc., L.P., 96 A.D.3d 635 (1st Dep't 2012); Massey v. Newburgh W. Realty, Inc., 84 A.D.3d 564, 565 & n.1 (1st Dep't 2011); Cuevas v. City of New York, 32 A.D.3d 372, 373 (1st Dep't 2006); People v. Nevado, 22 A.D.3d 383, 384 (1st Dep't 2005), show the staircase with its three steps leading to and from the entrance and exit doors into and out of the building and leading to and from the sidewalk. The top step extends into a platform or landing, divided into three sections by two masonry structures in front of the entrance and exit. The staircase leads up to two sections of the platform on the left side and abuts a wheelchair

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ramp that leads up to the right section. Menchel Aff. Ex. G, at 2.

As defined above, an exit is a means of egress from a building's interior to an open exterior. N.Y.C. Admin. Code § 27-232; Lopez v. Chan, 102 A.D.3d at 627; Castillo v. Akdeniz Realty, LLC, 91 A.D.3d at 532; Maksuti v. Best Italian Pizza, 27 A.D.3d at 300; Gaston v. New York City Hous. Auth., 258 A.D.2d at 221. The staircase on which plaintiff fell, situated outside the parameters of defendants' building, does not provide a means of egress from the building's interior to the open exterior space, as the staircase connects to a platform and does not proceed directly into the building's interior. Castillo v. Akdeniz Realty, LLC, 91 A.D.3d at 532. See DeRosa v. City of New York, 30 A.D.3d at 326. Three front doors provide the exit from the building by serving as a means of egress from the interior to the exterior space, which includes the platform in front of the doors. Gaston v. New York City Hous. Auth., 258 A.D.2d at 221, 223-24. Even if the staircase were part of the means of egress, it is not "a required exit," as it descends from only two-thirds of the platform, and the wheelchair ramp that descends from another section of the platform provides another path down to the street. N.Y.C. Admin. Code § 27-232.

For each of these reasons, the staircase does not serve "as a required exit," id., "in lieu of interior stairs." N.Y.C. Admin. Code § 27-376. Therefore it is not subject to Administrative Code § 27-375(f)(1)'s requirements for handrails

on staircases more than 88 inches wide. Castillo v. Akdeniz Realty, LLC, 91 A.D.3d at 531-32; Reyes v. Morton Williams Associated Supermarkets, Inc., 50 A.D.3d at 498; Gaston v. New York City Hous. Auth., 258 A.D.2d at 224; Sparrock v. City of New York, 219 A.D.2d at 706. See Lopez v. Chan, 102 A.D.3d at 627; DeRosa v. City of New York, 30 A.D.3d at 326. Nor is the staircase subject to Administrative Code § 27-375(e)(2), which requires riser heights to be constant, as this provision also applies to interior stairs and not to exterior stairs not used as a required exit. See Lopez v. Chan, 102 A.D.3d at 627.

V. THE INAPPLICABILITY OF THE STATE BUILDING CODE

Plaintiff further claims that the lack of handrails and the irregular riser height violated the Building Code of New York State (BCNYS) under the New York State Uniform Fire Prevention and Building Code Act. N.Y. Exec. Law §§ 373, 383; 19 N.Y.C.R.R. §§ 1219.1, 1221.1. If the BCNYS were to apply to the condition of defendants' stairs when used in 2009, the 2007 code would apply, not the 1984 code, albeit similar in relevant substance, that plaintiff cites. Building Code of N.Y. State § 101.2 (2007).

In 2009 BCNYS § 1009.11 required that: "Stairways shall have handrails on each side." If the stairway was required for egress, BCNYS § 1009.11.2 further provided that: "Intermediate handrails are required so that all portions of the stairway width required for egress capacity are within 30 inches (762 mm) of a handrail." Regarding riser height, BCNYS § 1009.3 required that:

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"The greatest riser height within any flight of stairs shall not exceed the smallest by more than 0.375 inch (9.5 mm)." These requirements applied to "either exterior or interior" stairways. Building Code of N.Y. State § 1002.1 (2007). The State Uniform Fire Prevention and Building Code, however, is inapplicable in New York City, as the City's own building and fire codes have been in effect since before 1982. N.Y. Exec. Law §§ 373(1), 383(1)(c); 19 N.Y.C.R.R. § 1202.1.

IV. THE ABSENCE OF ANY OTHER BASIS FOR DEFENDANTS' NEGLIGENCE

Given that the alleged code violations are based on code provisions that are inapplicable to defendants' staircase, plaintiff is left with his engineer's conclusion that the lack of handrails not more than 88 inches apart created a hazardous condition on the staircase. Neither plaintiff nor his wife identified what caused plaintiff to trip on the second step, Menchel Aff. Ex. C, at 41, Ex. D at 32, so that to support a negligence claim, except for the alleged code violations, plaintiff identifies no other condition due to defendants' negligence that caused his fall. Although plaintiff's engineer supports his opinion that the absence of a second handrail created a hazardous condition by showing that the condition violates a Life Safety Code published by the National Fire Protection Association and The Slip and Fall Handbook, he fails to attest that any of these publications' requirements is an accepted industry standard. Therefore any deviation from such requirements does not raise a factual issue of negligence to

survive summary judgment. Buchholz v. Trump 767 Fifth Ave., LLC, 5 N.Y.3d at 8-9; Cassidy v. Highrise Hoisting & Scaffolding, Inc., 89 A.D.3d 510, 511 (1st Dep't 2011); Rivera v. Bilynn Realty Corp., 85 A.D.3d at 518; Hotaling v. City of New York, 55 A.D.3d 396, 398 (1st Dep't 2008).

VII. DISPOSITION

For all the reasons explained above, defendants have shown the absence of any basis for their negligence, which plaintiff has failed to rebut, warranting summary judgment in defendants' favor. Lopez v. Chan, 102 A.D.3d at 627; Johnson v. 301 Holdings, LLC, 89 A.D.3d 550, 551 (1st Dep't 2011); Rivera v. Bilynn Realty Corp., 85 A.D.3d at 518; DeRosa v. City of New York, 30 A.D.3d at 326. Therefore the court grants defendants' motion for summary judgment and dismisses the complaint. C.P.L.R. § 3212(b).

DATED: April 30, 2014

Lucy Billings

LUCY BILLINGS, J.S.C.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

LUCY BILLINGS
J.S.C.