Ortiz v Riverbay Corp.
2015 NY Slip Op 31763(U)
August 12, 2015
Supreme Court, Bronx County
Docket Number: 301499/2012
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

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CINTRA ORTIZ,

Plaintiff,

- against -

RIVERBAY CORPORATION,

Defendants.

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DECISION AND ORDER

Index No. 301499/2012

PRESENT: Hon. Lucindo Suarez

Upon defendant's notice of motion dated March 27, 2015 and the affirmation, affidavits (2), exhibits and memorandum of law submitted in support thereof; plaintiff's affirmation in opposition dated June 28, 2015 and the exhibits submitted therewith; defendant's affirmation in reply dated July 17, 2015; and due deliberation; the court finds:

Plaintiff slipped and fell while exiting the lobby in the building where she lives. She alleges that defendant was negligent in failing to warn of an excessively wet lobby floor and that defendant negligently undertook maintenance efforts during a high-traffic period. Defendant moves for summary judgment, arguing that it discharged its duty to warn by placing a yellow "caution" sign in the lobby while the porter was mopping.

Plaintiff testified that upon exiting an elevator she walked approximately five feet to where the elevator hallway opened onto the lobby, and that it was another five feet to the threshold of the entrance vestibule, where her accident occurred. She saw no warning sign on her way out, although she did see a porter, who was neither doing nor holding anything, standing along the same wall as the elevators. This porter approached her after her fall.

Video surveillance of the vestibule door shows the porter actively mopping the lobby and the particular area where plaintiff fell to within ten seconds prior to the accident, moving out of the screen toward what would be the left of plaintiff's path of travel to exit the building. Immediately after the accident, he returns from the same direction with the mop to approach plaintiff. Video surveillance of the elevators shows that after exiting the elevator, plaintiff walked directly in between a yellow "caution" sign and a yellow industrial bucket, neither of which was concealed or hidden, situated at the opening of the elevator hallway onto the lobby. The porter is visible in a ceiling- or wall-mounted convex mirror continuing to mop in the lobby until at least the time that plaintiff exits the elevator. Defendant's affirmative act of mopping created a duty to warn, *see Rabat v. GNAC Corp.*, 180 A.D.2d 540, 579 N.Y.S.2d 407 (1st Dep't 1992); *Schiano v. TGI Friday's*, 205 A.D.2d 407, 613 N.Y.S.2d 881 (1st Dep't 1994), and defendant's proof was sufficient to establish *prima facie* entitlement to summary judgment, *see Rivero v. Spillane Enters., Corp.*, 95 A.D.3d 984, 943 N.Y.S.2d 235 (2d Dep't 2012).

The mere fact that plaintiff did not see the sign, bucket or mop in the lobby does not rebut defendant's evidence that all were present. *See Toner v. National R.R. Passenger Corp.*, 71 A.D.3d 454, 894 N.Y.S.2d 873 (1st Dep't 2010) (McGuire, J., concurring). Plaintiff testified more than once in her deposition that she would pay no heed to such objects even if present.

While true that the mere presence of a worker holding a mop in the general vicinity, without more, may not serve as sufficient warning, *see Soto v. 2780 Realty Co., LLC*, 114 A.D.3d 503, 980 N.Y.S.2d 93 (1st Dep't 2014), even if the porter here were not actively mopping at the time of plaintiff's travel through the lobby, the video surveillance demonstrates that he was standing with the mop even closer to the door than the sign and bucket that plaintiff walked past, given the angle of plaintiff as she greets the porter, as testified to, while the porter is

off-screen. There is no testimony or other proof that plaintiff's path to the door involved any obstacle, and it is clear from the video that nothing obstructed plaintiff's view of the sign, the bucket or the porter.

Plaintiff failed to raise an issue of fact that the sign was too remote from the door to serve as an adequate warning, particularly given the presence of the porter. Despite counsel's comparison of the subject lobby to that of the Empire State Building, plaintiff testified and the video surveillance showed that the accident location was mere steps from the location of the sign and bucket. The accident occurred within four seconds of plaintiff passing the sign and bucket, and placement of the warning in the general area suffices, *see Brown v. New York Marriot Marquis Hotel*, 95 A.D.3d 585, 943 N.Y.S.2d 531 (1st Dep't 2012); *Rivero*, *supra*.

The fact that the janitorial supervisor testified that more signs were generally used during mopping does not create an issue of fact, as "[t]he law imposes only the obligation to take reasonable measures to remedy a hazardous condition, and the failure to take any particular precaution which transcends that standard, even if customary, 'cannot serve as a basis [for] liability.'" *Toner*, *supra*, 71 A.D.3d at 455, 894 N.Y.S.2d at 874 (Tom, J.P., concurring); *see also Abraham v. Port Auth. of N.Y. & N.J.*, 29 A.D.3d 345, 347, 815 N.Y.S.2d 38, 40-41 (1st Dep't 2006) (holding that "internal rules and manuals, to the extent they impose a higher standard of care than is imposed by law, are inadmissible to establish a failure to exercise reasonable care").

Plaintiff's claim that the floor was excessively wet is belied by her own testimony and that of a fellow resident who witnessed the fall, and plaintiff provides no support for the proposition that it was negligent for defendant to mop the lobby at 7:45 a.m. All others traversing the lobby passed by the area without incident.

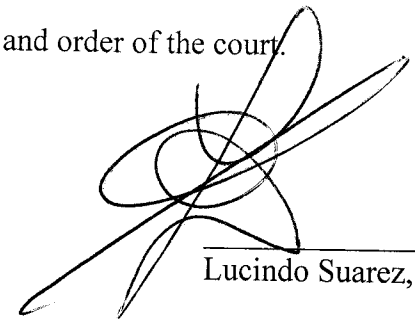
Accordingly, it is

ORDERED, that the motion of defendant Riverbay Corporation for summary judgment is granted; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant Riverbay Corporation dismissing plaintiff's complaint.

This constitutes the decision and order of the court.

Dated: August 12, 2015



Lucindo Suarez, J.S.C.