Vazquez v Friedman
2018 NY Slip Op 31728(U)
July 23, 2018
Supreme Court, Kings County
Docket Number: 505631/17
Judge: Debra Silber

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

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DELFINA VAZQUEZ,

Plaintiff,

-against-

MARK FRIEDMAN and CHANIE FRIEDMAN,

Defendants.

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DECISION / ORDER

Index No. 505631/17
Motion Seq. No. 1
Date Submitted: 7/12/18
Cal No. 58

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	12-21
Answering Affirmation and Exhibits Annexed.....	24
Reply Affirmation.....	25

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

This is a personal injury action arising out of a slip and fall attributed by plaintiff to a "doormat" placed inside of defendants' front door. Plaintiff was hired to clean the defendants' residence, and had been doing so twice a week for a number of years prior to the date of the accident.

Defendants contend they had no actual or constructive notice of any alleged dangerous or hazardous condition associated with the piece of carpeting being used as a doormat, which had been used by the defendants for some period of time without incident, and they further assert that they did not create a dangerous or defective condition. Plaintiff opposes the motion and contends that defendants have failed to

establish their entitlement to summary judgment by affirmatively demonstrating that they did not create the dangerous condition or that they lacked notice of the dangerous condition - - an unsecured carpet remnant without any non-skid backing, placed on a wooden floor that had recently been refinished and was slippery.

Defendants support their (untabbed) motion with an attorneys' affirmation, the pleadings, a photo of the room with the doormat, and the EBT transcripts of plaintiff and defendants.

Chanie Friedman, defendant herein, testified that the "doormat" at issue was made from a piece of leftover carpeting she had installed elsewhere in the house around nine years earlier (Exhibit F, Pages 13-14). Ms. Friedman testified that she gave several pieces of this leftover carpet to a store of some sort,[1] which "finished off" the edges. She testified that she placed this particular piece of the remnant at this location after she had the floors redone, (Exhibit F at 15) which was approximately four months before plaintiff's accident. She was asked what the backing was made of, and she said "I do not know." She was asked if the piece of carpet had a non-skid backing and she testified that she did not know. (Exhibit F, Pages 15-16). She acknowledged that it was not secured to the floor. The floor was made of wood, and she had the floors refinished in that room four months before the plaintiff's accident, which included sanding and two coats of polyurethane. She said she couldn't be more specific as she was away with her children when the work was done. Ms. Friedman testified that the rug had been used by the defendants and their 11 children for several months without incident, that it had

[1]The testimony isn't clear whether it was the carpet store or a tailor shop or something else.

never moved or slipped (Exhibit F at 26-27); that there were no prior accidents related to the mat; and they had never received any complaints about it (Exhibit F at 34). She also testified that her children "played" with it, using it, for example, as a bed for their dolls (Exhibit F at 26).

Defendant Mark Friedman testified that the mat was not affixed to the floor but it did not move. He had never seen anyone slip or trip on the doormat prior to plaintiff's accident and he never received any complaints about the doormat slipping or moving prior to plaintiff's accident (Exhibit G at 12-13).

Plaintiff testified that she had slipped on the mat about two months earlier, but didn't injure herself. She said never told the defendants about it (Exhibit D at 36, 37). The house has three levels and she cleaned, washed and ironed. Other housekeepers worked there on other days. She testified that she was walking to the front door to let some of the children in when she stepped on the mat, it moved, and she fell (Exhibit D at 25).

The court finds the defendants have not made a prima facie case for summary judgment and thus the court need not consider the plaintiff's papers in opposition. Chanie Friedman did not offer any information to support her claim that she did not create a dangerous condition. She did not offer to identify the type of carpeting it was. She testified that the floor refinisher was hired by someone no longer in business and she did not know the name of the floor refinishing company or what type of wax or polyurethane the floor was finished with (Exhibit F at 22-24), and did not offer any expert's affidavit. It is common knowledge that rugs placed on a hard floor move and cause people to slip and fall if they do not have a non-skid backing or non-skid pad

between the rug and the floor.[2]

"A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it" (*Joachim v 1824 Church Ave., Inc.*, 12 AD3d 409, 410 [2d Dept 2004]). Here, defendants, who created this mat from a carpet remnant, without insuring that it had a non-slip surface on the bottom, have failed to meet their burden of establishing that they did not cause or create a dangerous condition (*see Napolitano v Dhingra*, 249 AD2d 523, 524 [2d Dept 1998] [new trial required as "testimony of the plaintiff and a housekeeper, when viewed in the appropriate light, was sufficient to establish that the floor where the accident occurred was hard, smooth, shiny, and slippery, and that the throw rug did not have an appropriate backing to prevent it from moving when stepped on"]; *Ashton v Bobruitsky*, 214 AD2d 630, 630-31 [2d Dept 1995] [Evidence at trial supported finding that homeowners were negligent where visitor sustained injuries when he stepped on edge of unsecured throw rug and it slipped out from under him; homeowners admitted that they placed rug on top of varnished and shiny hardwood floor, and their grandchild had slipped and fallen on rug prior to visitor's accident]; *cf. Mansueto v Worster*, 1 AD3d 412, 413 [2d Dept 2003] ["The defendant established her entitlement to judgment as a matter of law by demonstrating that placing the carpet remnant on top of the carpeted floor did not constitute an inherently

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[2]For example, Consumer Reports, December 10, 2013, "Prevent Dangerous Falls in Winter" states, in pertinent part:" Safe floors - Use matte, no-shine finishes for hard floors; waxy finishes are slippery. Remove area and throw rugs or secure them to the floor using double-sided tape that goes all the way to the edges."

dangerous condition"]; *Mannix v Matthews*, 30 AD2d 895 [3d Dept 1968] [verdict set aside where plaintiff was injured when she slipped on a scatter rug that had been laid on a highly polished wood floor and there was "no evidence of any defective condition of the floor or the rug"]).

Accordingly, it is

ORDERED that the motion is denied.

This constitutes the decision and order of the court.

Dated: July 23, 2018

ENTER:

Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court