Trinidad v New York Holding Co. Assoc.
2018 NY Slip Op 32331(U)
September 20, 2018
Supreme Court, New York County
Docket Number: 152039/2016
Judge: Anthony Cannataro

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

JOSE TRINIDAD,

Plaintiff,

- against - Index No.: 152039/2016

NEW YORK HOLDING COMPANY ASSOCIATES and NEW YORK HOLDING COMPANY,

DECISION & ORDER

Defendants.

Anthony Cannataro, J.:

Defendants, New York Holding Company Associates and New York Holding Company, move for summary judgment in this personal injury action.

On January 11, 2016, plaintiff slipped and fell while descending the staircase of the five-story walk-up building in which he resided. Plaintiff testified that the accident happened at about 6:15 p.m. The last time plaintiff had used the stairway was at about 1:00 p.m. the day before. On the date of the accident, plaintiff noticed glass on the steps but did not report the condition to anyone. After his fall, plaintiff was transported by ambulance to a hospital where he was treated for multiple fractures to his right ankle and foot. A call was placed to the building superintendent, who apparently was not in the building at the time of the accident, and he returned at about 6:30 p.m.

The superintendent testified that his routine was to work from 7:00 a.m. to 3:00 p.m. sweeping common areas of the building including the stairwell daily and mopping it twice a week. The superintendent further testified that he mopped the stairs at about noon on the day of the accident and saw no garbage or glass on the stairs. He stated that when he was called back to the building on the day of the accident, he found a large piece of furniture with broken glass. Plaintiff denied seeing any such furniture.

Plaintiff also stated that the hallways and stairs of the building were routinely dirty, prompting him to complain about the condition to the superintendent and building management several times in the past.

Defendants argue that summary judgment should be granted here because they did not have actual or constructive notice of the broken glass on the stairs for a sufficient length of time to remedy it. Defendants assert that plaintiff's own affidavit attesting to complaints about general reoccurring dirty conditions on the stairs did not put defendant on notice of the specific condition of broken glass. Defendants further argue that as plaintiff did not offer evidence on the condition between defendant's cleaning and plaintiff's accident, plaintiff did not establish that the condition was present for a sufficient length of time for defendant to discover and remedy it.

Plaintiff argues that defendants' knowledge of recurrent conditions in the stairwell in the past, regardless of the particular type of condition, constitutes constructive notice of the specific condition that plaintiff alleges caused him to fall and, therefore, summary judgment must be denied

On a motion for summary judgment, the movant carries the initial burden of "tendering sufficient evidence to demonstrate the absence of any material issue of fact" to warrant the court directing a judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1st Dept 1986]). Once the movant meets its initial burden, the burden then shifts to the opposing party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1st Dept 1980]).

"To demonstrate its entitlement to summary judgment in a slip-and-fall case, a defendant must establish, prima facie, that it did not create the condition that allegedly caused the fall, and did not have actual or constructive notice of that condition for a sufficient length of time to remedy it" (*Cummins v New York Methodist Hosp.*, 85 AD3d 1082, 1083 [2nd Dept 2011]). To establish constructive notice "a defect must be visible

and apparent and it must exist for a sufficient length of time prior to the accident" to allow for discovery of it and an opportunity to remedy it (*Gordon v Am. Museum of Nat. History*, 67 NY2d 836, 837 [1986]). Proof of such a defect may be established by a specific recurring dangerous condition routinely left unaddressed by defendant rather than a mere general awareness, for which defendant is not liable (*Raposo v New York City Hous. Auth.*, 94 AD3d 533, 534 [1st Dept 2012]).

Plaintiff's assertion that he made several complaints to defendants about the dirty condition in the stairwell is insufficient to establish constructive notice of glass on the stairs on the date of the accident. Complaints of negligently maintained staircases can establish constructive notice when they are supported by affidavits of others confirming the condition or accompanied by proof of an ineffective cleaning schedule (*See O'Connor-Miele v Barhite & Holzinger, Inc.*, 234 AD2d 106, 107 [1st Dept 1996]; *Lopez v New York City Hous. Auth.*, 255 AD2d 160, 160 [1st Dept 1998]). However, in the instant case, the only evidence of the negligently maintained stairs is plaintiff's own claim that he made several complaints about dirty conditions in the stairway.

Moreover, defendant adduced evidence of cleaning procedures on the date of the accident which tends to show a lack of constructive knowledge of the particular defect alleged to have caused plaintiff's accident. Evidence of cleaning procedures on the date of the accident is sufficient to establish a lack of knowledge of a hazardous condition (*Birnbaum v New York Racing Ass'n Inc.*, 57 AD3d 598, 599 [2nd Dept 2008]). Defendant points to testimony of the superintendent that he had a routine of sweeping the floors every morning and mopping them twice a week. Even though plaintiff argues that there is an issue of fact as to the superintendent's cleaning routine, specifically as it relates to cleaning on weekends, any such issue would be irrelevant since it was clearly established that on the date of the accident, a Monday, the superintendent swept and mopped the stairs. While the superintendent did not clean the stairs since earlier that morning,

defendants are "not required to patrol its staircases 24 hours a day" (*Rodriguez v New York City Hous. Auth.*, 102 AD3d 407, 408 [1st Dept 2013]).

Under the facts presented here, plaintiff did not establish that the defect existed for a sufficient length of time prior to the accident for defendant to discover and remedy it. "To meet its initial burden on the issue of lack of constructive notice, the defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell" (*Birnbaum* at 598-9). The Court of Appeals has held that without evidence of anyone observing the defect prior to the accident, it "could have been deposited only minutes or seconds before the accident and any other conclusion would be pure speculation" (*Gordon* at 838). Similarly, there is no evidence here concerning the length of time that the glass was on the stairs prior to plaintiff's accident. As such, it cannot be said, as a matter of law, that there was sufficient time for the defendant to have notice of and remedy the condition. Accordingly, it is

ORDERED that the defendants' motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated:

ENTER:

Anthony Cannataro, JSC