Molina v 2390 Creston Realty LLC
2019 NY Slip Op 30388(U)
February 1, 2019
Supreme Court, New York County
Docket Number: 452738/2015
Judge: Lucy Billings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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RUBEN MOLINA, Index No. 452738/2015

Plaintiff

- against - DECISION AND ORDER

2390 CRESTON REALTY LLC,

Defendant

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LUCY BILLINGS, J.S.C.:

Plaintiff sues defendant owner of a residential apartment building for injuries he sustained January 28, 2015, when he slipped and fell on garbage and grease on the building's interior stairs as he was descending them. Defendant moves for summary judgment dismissing the complaint. C.P.L.R. § 3212(b). All defendant's defenses, however, only raise issues regarding plaintiff's comparative fault and fail to establish that his conduct constituted the sole proximate cause of his fall and that the garbage and grease played no part. See, e.g., Farrugia v. 1440 Broadway Assocs., 163 A.D.3d 452, 454-55 (1st Dep't 2018); Socorro v. New York Presbyt. Weill Cornell Med. Ctr., 160 A.D.3d 544, 545 (1st Dep't 2018); Johnson-Glover v. Fu Jun Hao Inc., 138 A.D.3d 499, 500 (1st Dep't 2016); Saretsky v. 85 Kenmare Realty Corp., 85 A.D.3d 89, 90 (1st Dep't 2011).

The deposition testimony by the building's superintendent establishes that tenants regularly used the stairs to carry their garbage to the basement, raising the inference that pieces of

garbage might fall onto the stairs through tenants' inadvertence during these regular trips. In fact, plaintiff testified at his deposition that when he ascended the stairs at 5:00 p.m. January 28, 2015, he noticed "a lot of pieces of garbage, like chicken bones, eggshell . . . , cooking rice, and some oil, grease." Aff. in Supp. of Kelli A. McGrath Ex. D, at 61. When he descended the stairs approximately three hours later, accompanied by his grandson and by a friend, Jorge Rozon, plaintiff slipped on the garbage he had observed earlier.

Based on plaintiff's and Rozon's deposition testimony that garbage was strewn over three to four steps on the staircase, defendant claims that the slippery condition was readily observable. The visibility of a dangerous condition on the stairs may eliminate defendant owner's duty to warn of the condition, but not its duty to remedy the condition and maintain the stairs in a safe condition. Farrugia v. 1440 Broadway Assocs., 163 A.D.3d at 454; Polini v. Schindler El. Corp., 146 A.D.3d 536, 536 (1st Dep't 2017); Johnson-Glover v. Fu Jun Hao Inc., 138 A.D.3d at 500; Sorrentini v. Netta Realty Group, 100 A.D.3d 484, 485 (1st Dep't 2012). Defendant may not seriously contend that greasy garbage strewn on a staircase that residents and visitors of the premises regularly ascended and descended was not dangerous and that injury from such a condition was unforeseeable.

Defendant further claims that plaintiff slipped on the garbage and fell because he let go of the staircase's handrail

and turned around to listen to his grandson who was speaking. Yet defendant does not claim, let alone establish through admissible evidence, that plaintiff's failure to hold onto the handrail or turning toward his grandson was the sole cause of plaintiff's fall or that, absent the garbage, his actions would have caused him to fall anyway.

Plaintiff's testimony establishes further that defendant received actual notice of the slippery condition when plaintiff informed the superintendent at 5:00 p.m. about the garbage spill on the stairs: "As I was going up, he was coming down. . . . I told him there was some grease on the floor, on the stairs, and some garbage . . . . And he said he was going to take care of it." McGrath Aff. in Supp. Ex. D, at 62. No evidence establishes that the three hours between then and when plaintiff fell was insufficient time to clean up or at least place a barrier or other warning above the spill. Hill v. Manhattan N. Mgt., 164 A.D.3d 1187, 1188 (1st Dep't 2018); Morabito v. 11 Park Pl. LLC, 107 A.D.3d 472, 472-73 (1st Dep't 2013); Munoz v. Uptown Paradise T.P. LLC, 69 A.D.3d 401, 401-402 (1st Dep't 2010). See Parietti v. Wal-Mart Stores, Inc., 29 N.Y.3d 1136, 1137 (2017).

For all the reasons explained above, defendant fails to establish that it lacked notice of a dangerous slippery condition on its staircase, that it did not unreasonably delay in addressing the condition, and that the condition did not contribute to plaintiff's fall on the staircase. Therefore the

court denies defendant's motion for summary judgment. C.P.L.R. § 3212(b). This decision constitutes the court's order.

DATED: February 1, 2019

LUCY BILLINGS, J.S.C.

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J.S.C.