Soon Ja Yook v Hilton Worldwide, Inc.
2019 NY Slip Op 30446(U)
February 14, 2019
Supreme Court, New York County
Docket Number: 156800/2015
Judge: Lucy Billings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46
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SOON JA YOOK, Index No. 156800/2015

Plaintiff

- against - DECISION AND ORDER

HILTON WORLDWIDE, INC. D.B.A. WALDORF ASTORIA NEW YORK, HLT NY WALDORF LLC, and WALDORF-ASTORIA MANAGEMENT LLC,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff seeks damages for injuries she suffered from a fall while descending a staircase in defendants' Waldorf Astoria Hotel at 301 Park Avenue in New York County. Plaintiff alleges that defendants failed to keep the stairs free from hazards, defects, or traplike conditions, which caused plaintiff to fall and sustain injury. Plaintiff has discontinued her claims against defendant Hilton Worldwide, Inc., through a stipulation.

I. UNDISPUTED FACTS

Plaintiff was a guest at defendants' hotel June 9, 2015, when she used the stairs leading to Park Avenue to exit the hotel. The Park Avenue stairs were equipped with three handrails, one down the middle of the staircase and one along each wall, and an anti-slip grip tape adhered to the lip of each step. Plaintiff was looking straight ahead as she descended the stairs without holding a handrail. As she attempted to step from the second to last step onto the last step, she fell forward down

the stairs, injuring her left ankle.

Defendants' security cameras recorded the moments before, during, and after plaintiff's fall. Defendants' employees Gloria Holmes and George Nurse came to the Park Avenue staircase after plaintiff fell. Israel Carranza, the Waldorf Astoria Hotel's security manager, did not come to the scene, but later viewed the security camera footage of plaintiff's fall and filled out a report of the incident. Both plaintiff's and defendants' experts inspected the stairs and viewed the security camera footage.

The remaining defendants now move for summary judgment dismissing the complaint, C.P.L.R. § 3212(b), maintaining that plaintiff fails to show any hazardous or defective condition that caused her fall. Plaintiff in opposition maintains that she fell when her left toe snagged on the second to last step's strip of grip tape, which interrupted her gait so that only her right heel landed on the last step, causing her to fall.

II. APPLICABLE STANDARDS

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. C.P.L.R. § 3212(b); Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012). 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. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; 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). In evaluating the evidence for purposes of defendants' motion, the court construes the evidence in the light most favorable to plaintiff. De Lourdes Torres v. Jones, 26 N.Y.3d at 763; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004). Defendants do not satisfy their burden upon their motion for summary judgment by pointing to gaps in plaintiff's evidence. Hairston v. Liberty Behavioral Mgt. Corp., 157 A.D.3d 404, 405 (1st Dep't 2018); Belgium v. Mateo Prods., Inc., 138 A.D.3d 479, 480 (1st Dep't 2016); McCullough v. One Bryant Park, 132 A.D.3d 491, 492 (1st Dep't 2015).

Defendants are liable for hazardous conditions on their premises that caused plaintiff's injury if defendants created the dangerous condition or received actual or constructive notice of the hazard, but failed to remedy it. Derix v. Port Auth. of N.Y. & N.J., 162 A.D.3d 522, 522 (1st Dep't 2018); Pintor v. 122 Water Realty, LLC, 90 A.D.3d 449, 451 (1st Dep't 2011); Smith v. Costco Wholesale Corp., 50 A.D.3d 499, 500 (1st Dep't 2008); Alexander v. New York City Tr., 34 A.D.3d 312, 313 (1st Dep't 2006). Therefore, to obtain summary judgment, defendants must make a

prima facie showing that they maintained their staircase in a reasonably safe condition, free of known or discoverable hazards. Parietti v. Wal-Mart Stores, Inc., 29 N.Y.3d 1136, 1137 (2017); Graham v. YMCA of Greater N.Y., 137 A.D.3d 546, 547 (1st Dep't 2016); Navarro v. H. Heiden, LLC, 115 A.D.3d 564, 564 (1st Dep't 2014); Rodriguez v. New York City Hous. Auth., 102 A.D.3d 407, 407 (1st Dep't 2013).

III. DEFENDANTS' FAILURE TO MEET THEIR BURDEN

Defendants claim the stairs were free from hazards or defects and did not proximately cause plaintiff's injury. Defendants rely on their engineer Jeffrey Schwalje, who attests that he inspected the stairs August 17, 2017, when he found them safely designed, constructed, and maintained. Aff. of Matthew E. Markoff Ex. L ¶¶ 4, 18(A). Upon viewing the security camera footage of plaintiff's fall, he concludes that plaintiff fell because she was not looking where she was walking and overstepped the last step, causing her to fall forward. Id. ¶¶ 6 18(G).

Neither Schwalje nor any other evidence, however, indicates that the stairs were in the same condition when he inspected them as when plaintiff was injured, whether by comparison with the camera footage or otherwise. Id. ¶ 4. Therefore Schwalje does not establish the absence of any hazard, defect, or traplike condition on the stairs when plaintiff fell. Santana v. New York City Hous. Auth., 128 A.D.3d 564, 565 (1st Dep't 2015); Green v. Gracie Muse Rest. Corp., 105 A.D.3d 578, 579 (1st Dep't 2013); Alston v. Zabar's & Co., Inc., 92 A.D.3d 553, 553 (1st Dep't

2012); Burch v. Village of Hempstead, 139 A.D.3d 778, 779 (2d Dep't 2016).

Defendants also rely on Israel Carranza's deposition testimony and his incident report from the date plaintiff was injured. Carranza's testimony does not establish that the stairs were free from defects or hazardous conditions because, having admitted that he did not personally inspect the stairs where plaintiff fell, he lacks personal knowledge of the stairs' condition before or after plaintiff fell. Markoff Aff. Ex. J, at 19, 44. Although the incident report recites that the stairs were free from obstructions or slipping hazards, Carranza testified that he prepared that part of the incident report based on information from the security officers who inspected the area. Id. at 19. Even assuming that the security officers owed a business duty to report to Carranza, see People v. Patterson, 28 N.Y.3d 544, 550-51 (2016); Matter of Leon RR, 48 N.Y.2d 117, 122-23 (1979); 76th & Broadway Owner LLC v. Consolidated Edison Co. of N.Y. Inc., 160 A.D.3d 447, 447 (1st Dep't 2018); People v. Schlesinger Elec. Contrs., Inc., 143 A.D.3d 516, 518 (1st Dep't 2016), neither he, nor any security officer, nor any other witness lays a business record foundation for the incident report. Therefore its account of the stairs' condition is inadmissible hearsay. C.P.L.R. § 4518(a); People v. Ramos, 13 N.Y.3d 914, 915 (2010); People v. Bell, 153 A.D.3d 401, 412 (1st Dep't 2017); O'Connor v. Restani Constr. Corp., 137 A.D.3d 672, 673 (1st Dep't 2016); People v. Vargas, 99 A.D.3d 481, 481 (1st

Dep't 2012).

Finally, the security camera footage of plaintiff's fall that defendants present captures her fall only from a distance and does not show the staircase's last two steps clearly enough to assess their condition or the cause of her fall. This footage thus fails to demonstrate conclusively that those steps were free from hazards, defects, or traplike conditions or that such conditions did not cause her fall. Derouen v. Savoy Park Owner, L.L.C., 109 A.D.3d 706, 706 (1st Dep't 2013); Green v. Price Chopper, Inc., 164 A.D.3d 478, 479 (2d Dep't 2018).

Since defendants present no admissible evidence that the stairs were free of hazards, defects, or traplike conditions when plaintiff fell on the stairs, defendants fail to establish a prima facie defense to plaintiff's claims. Although defendants maintain that they are entitled to summary judgment because plaintiff's evidence fails to show any hazard, defect, or traplike condition on the stairs when plaintiff fell on them or that any such condition proximately caused her fall, defendants may not meet their burden upon their motion for summary judgment by pointing to gaps in plaintiff's evidence. Hairston v. Liberty Behavioral Mgt. Corp., 157 A.D.3d at 405; Belgium v. Mateo Productions, Inc., 138 A.D.3d at 480; McCullough v. One Bryant Park, 132 A.D.3d at 492.

IV. PLAINTIFF'S REBUTTAL

Even if defendants met their burden, plaintiff's opposition raises factual issues that defeat summary judgment. Plaintiff's

engineer Joel Schachter attests that he inspected the Park Avenue stairs at defendants' hotel within a week after plaintiff's injury and reviewed the security camera footage depicting her fall. Aff. of Michael Kremins Ex. A ¶¶ 5-6. While it is possible that the stairs' condition changed even in the short interval between her fall and Schacter's inspection, defendanats' own evidence establishes their placement of grip tape on the lip of each stair. Schachter finds that this raised layer of tape created a tripping hazard and traplike condition that snagged plaintiff's left toe as she descended the last two steps, forcing her right leg to overextend and land on the last step with only her right heel, which caused plaintiff to lose her balance and fall forward. Id. ¶ 8(g). Although she did not identify what on the last two steps caused her to fall, her testimony that she slipped and fell there, Markoff Aff. Ex. G, at 29, 85-87, combined with her expert's finding that the raised grip tape adhered to those steps caused plaintiff's fall, presents a factual issue whether that condition, created by defendants, caused plaintiff to fall, precluding summary judgment in defendants' favor. Suarez v. Emerald 115 Mosholu LLC, 164 A.D.3d 1130, 1131 (1st Dep't 2018); Berr v. Grant, 149 A.D.3d 536, 537 (1st Dep't 2017); Gold v. 35 E. Assoc. LLC, 136 A.D.3d 453, 453-54 (1st Dep't 2016); Rodriguez v. Leggett Holdings, LLC, 96 A.D.3d 555, 556 (1st Dep't 2012).

Defendants maintain that the conclusions by plaintiff's expert must be considered meritless merely because they

contradict the conclusion by defendants' own expert that plaintiff fell because she missed a step. Defendants do not show, however, that any opinion by plaintiff's expert contradicts plaintiff's testimony or otherwise was tailored to defeat summary judgment, which would be the only basis on which to disregard her expert. Given the conflicting expert opinions, the court may not resolve the issues of fact and credibility that they raise via summary judgment. Scholastic Inc. v. Pace Plumbing Corp., 129 A.D.3d 75, 87 (1st Dep't 2015); Mike v. 91 Payson Owners Corp., 114 A.D.3d 420, 420 (1st Dep't 2104); Hernandez v. 21 Realty Co., 113 A.D.3d 503, 503 (1st Dep't 2014); Friedman v. BHL Realty Corp., 83 A.D.3d 510, 510 (1st Dep't 2011).

V. CONCLUSION

For all the reasons explained above, the court denies defendants' motion for summary judgment. C.P.L.R. § 3212(b). This decision constitutes the court's order.

DATED: February 14, 2019

LUCY BILLINGS, J.S.C.

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