Alonzo v 215 Audubon Ave. Hous. Dev. Fund
2019 NY Slip Op 33236(U)
October 30, 2019
Supreme Court, New York County
Docket Number: 155259/2016
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH **PART** IAS MOTION 32

Justice

----------X

AWILKA ALONZO

Plaintiff,

- v -

215 AUDUBON AVENUE HOUSING DEVELOPMENT FUND,

Defendant.

----------X

INDEX NO. 155259/2016

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for DISMISSAL.

The motion by defendant for summary judgment dismissing this case is granted.

Background

This action arises out of plaintiff's purported trip and fall over a metal door saddle in her apartment building's lobby. Plaintiff claims that on July 10, 2015, she was leaving for work when her left foot bumped into the metal door saddle and she fell. Plaintiff contends that the door saddle constitutes a defective condition because it was not flush with the tile floor.

Defendant moves for summary judgment on the ground that the metal door saddle does not constitute a defect. Defendant's expert opined that "the saddle/threshold at the subject premises is free of defect in design, installation or maintenance, and does not pose a tripping hazard" (NYSCEF Doc. No. 28, ¶ 7). He found that "The lobby tiles are situated slightly under the saddle/threshold and the gap between the ceramic tile and the underside of the saddle/threshold varies between one-quarter of an inch (1/4") and half an inch (1/2") across the

entire walking path. Similarly, the outer saddle edge, measured between flush and half an inch (1/2") high above the sidewalk. The lobby door saddle was observed to be firmly attached and safe under pedestrian loading. The saddle was not loose and did not rock side to side or front to back. The saddle/threshold has none of the characteristics of a snare or trap" (*id.* ¶ 6).

In opposition, plaintiff's expert did not dispute the measurements offered by defendant's expert (NYSCEF Doc. No. 36). Instead, he insisted that the "metal door saddle was raised above the height of the ceramic floor" and there "was a sharp lip and a tripping hazard" (*id.* ¶ 18). Plaintiff's expert also concluded that the raised position of the door saddle was a "toe trap" and violated the New York City Building Code (*id.* ¶¶ 13-18).

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]). Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or

can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee,* 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Trivial Defect

"[W]hether a dangerous or defective condition exists on the property of another so as to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury" (*Trincere v County of Suffolk*, 90 NY2d 976, 977, 665 NYS2d 615 [1997] [internal quotations and citation omitted]). "Of course, in some instances, the trivial nature of the defect may loom larger than another element. Not every injury allegedly caused by an elevated brick or slab need be submitted to a jury" (*id.*). A court must examine "the facts presented, including the width, depth, elevation, irregularity, and appearance of the defect along with the time, place and circumstance of the injury" (*id.* at 978).

"There is no per se rule with respect to the dimensions of a defect that will give rise to liability on the part of a landowner or other party in control of premises . . . and even a trivial defect may constitute a snare or trap" (*Argenio v Metro. Transp. Auth.*, 277 AD2d 165, 166, 716 NYS2d 657 [1st Dept 2000] [internal citations omitted]). "While a gradual, shallow depression is generally regarded as trivial the presence of an edge which poses a tripping hazard renders the defect nontrivial" (*id.* [internal citations omitted]).

"A small difference in height or other physically insignificant defect is actionable if its intrinsic characteristics or the surrounding circumstances magnify the dangers it poses" (*Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 78, 19 NYS3d 802 [2015]). "The relevant questions are whether the defect was difficult for a pedestrian to see or to identify as a

hazard or difficult to pass over safely on foot in light of the surrounding circumstances" (*id.* at 80).

Here, the Court finds that the metal door saddle is a trivial defect as a matter of law based on its height differential and the photographs (NYSCEF Doc. Nos. 27, 35) submitted by the parties (*cf. Atkinson v Key Real Estate Associates, LLC*, 142 AD3d 871, 872, 37 NYS3d 797 [1st Dept 2016]). In *Atkinson*, a plaintiff tripped when her two-inch heels got caught on the raised edge of a metal bull-nosing that measured between 1/8 of an inch to 1/4 of an inch (*id.*). Although plaintiff insisted that the bull-nosing was a trap, the First Department found that the alleged defect was trivial (*id.*). The similar circumstances of this case compel the Court to follow *Atkinson* and find that the door saddle was not a trap.

Accordingly, it is hereby

ORDERED that the motion by defendant for summary judgment dismissing the complaint is granted and the clerk is directed to enter judgment accordingly, with costs, upon presentation of proper papers therefor.

10/30/19
DATE

ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION	
	X	GRANTED		DENIED	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE