To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

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KIMBERLY SANTIAGO,

Plaintiff,

DECISION & ORDER
Index No. 50864/2017
Motion Sequence 5

-against-

POST ROAD ASSOCIATES, LLC and UNICORN CONTRACTING CORP.,

Defendants.

---x

UNICORN CONTRACTING CORP.,

Third-Party Plaintiffs,

-against-

WHITE PLAINS HOSPITAL,

Defendant.

---x

The following papers were received and considered in connection with the defendants' motion for summary judgment:

Notice of Motion/Affirmation/Affidavits(3)/Exhibits A-S	1-24
Memorandum of Law	25
Affirmation in Opposition/Exhibits A-F	26-32
Memorandum of Law in Opposition	33
Affidavit in Opposition	34
Reply Affirmation	35

Factual and Procedural Background

The plaintiff, Kimberly Santiago ("Santiago") commenced this action by filing a summons and complaint on January 20, 2017, to recover monetary damages for a trip and fall accident that occurred on August 2, 2016, on the interior staircase of 101 East Post

Road, White Plains, New York. The defendant, Post Road Associates, LLC ("Post Road"), and the defendant, Unicorn Contracting Corp. ("Unicorn") both commenced a third-party action against the third-party defendant, White Plains Hospital Medical Center ("WPH").

On the day of the accident, Santiago was an employee at White Plains Hospital. She testified that she worked on the third floor of the building where the accident occurred and slipped on the landing of the second floor as she was going down the stairs. She testified that she was told that a metal bracket caused her to trip and fall.

Unicorn now moves for summary judgment to dismiss the complaint, pursuant to CPLR 3212, arguing that its contracting involvement with the Premises ended in June 2016 and at the time of Santiago's accident the construction work had been completed. Unicorn asserts that at the time of the accident it did not control, operate, manage, or have anything to do with the subject property. Unicorn also contends that it is entitled to contractual indemnification from WPH because it was an agent of Post Road, WPH was responsible for the janitorial service within the hospital, including the interior staircase and Santiago alleges she tripped and fell over a transient condition.

In opposition, Santiago, by her attorney, argues that Unicorn has failed to make a prima facie showing of entitlement as it has not shown that it did not create and/or have notice of the condition and it did not show when the staircase was last cleaned nor inspected. Santiago further argues that a metal hinge caused her to fall and she saw workers in the staircase prior to her fall and the staircase was in a generally dirty condition. Santiago also asserts that the witness Steven Giamundo cannot establish a prima facie case, as he does not know when the area was last cleaned and inspected and he was not

present on the morning of the accident. Santiago also argues that Unicorn is not entitled to summary judgment, because the lease agreement states that the landlord or its agent is responsible for the common areas of the building, which would include the staircase.

Discussion

A party on a motion for summary judgment must assemble affirmative proof to establish his entitlement to judgment as a matter of law (*see Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]). "[T]he proponent of a summary judgment motion 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" (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact (*see e.g. Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]) and the burden shifts to the party opposing the motion, who must then show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of their position (*Id.*).

To impose liability upon a defendant in a slip-and-fall case, a plaintiff has to put forth evidence showing the existence of a dangerous or defective condition and a defendant moving for summary judgment has the initial burden of establishing, prima facie, that it neither created the dangerous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it, (*see Davis v* Sutton, 136 AD3d @ 732-733; *Sawicki v GameStop Corp.*, 106 AD3d 979; *Armijos v. Vrettos Realty Corp.*, 106 AD3d 847; *Freiser v Stop & Shop Supermarket Co., LLC*, 84 A.D.3d 1307, 1308). "To constitute constructive notice, a defect must be visible and apparent and it must

exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it" (*Kane v Peter M. Moore Const. Co., Inc.*, 145 AD3d 864 [2d Dept 2016]).

In this case, there is no evidence that anyone, including Santiago observed the metal hinge prior to her accident. It "could have been deposited there only minutes or seconds before the accident and any other conclusion would be pure speculation" (*see Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]).

In addition, the affidavits and evidence submitted show that WPH took full possession of the premises at least one month prior to Santiago's accident and pursuant to the lease, was responsible for, among other things, cleaning, repairs, and maintenance inside the building, including the interior stairwells. Further, Unicorn established that it completed work prior to Santiago's accident and did not control, operate, manage, or have anything to do with the Premises at the time of the accident.

Additionally, WPH acknowledges that it was in full possession and occupancy of the Premises prior to Santiago's accident on August 2, 2016 and that pursuant to the lease agreement WPH was responsible for cleaning, repairs and maintenance inside the building.

Since the Court has already found that WPH is not liable and has dismissed the action against it, Unicorn's third-party claims are also dismissed.

Accordingly, it is

ORDERED that Unicorn's motion for summary judgment is granted; and it is

ORDERED that all claims and cross-claims against Unicorn are dismissed.

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, New York
June 28, 2019

HON. SAM D. WALKER, J.S.C.