Bestman v Frederick Douglas Laundromat LLC
2021 NY Slip Op 31846(U)
June 2, 2021
Supreme Court, New York County
Docket Number: 157737/2018
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

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SAMUEL BESTMAN

Plaintiff,

- v -

FREDERICK DOUGLAS LAUNDROMAT LLC,

Defendant.

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INDEX NO. 157737/2018

MOTION DATE 05/28/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for JUDGMENT - SUMMARY.

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

Background

Plaintiff claims that he slipped and fell on a blue liquid in front of a washing machine in a laundromat operated by defendant. Defendant moves for summary judgment on the ground that it did not create the condition and emphasizes that patrons wash their own clothes at this laundromat. It also argues that it lacked actual notice of the detergent (the blue liquid) that caused plaintiff to allegedly slip and fall and that it lacked constructive notice of this condition.

In opposition, plaintiff claims that the motion should be denied because the testimony from defendant's witness at her deposition contradicts the affidavit she submitted in connection with this motion. He asks the Court to disregard the affidavit. Plaintiff argues that there is an issue of fact with respect to whether defendant knew about the blue liquid and suggests it could have existed for up to three hours. He contends that a jury should be permitted to determine

whether there should have been an inspection of the laundromat floor given the large number of washing machines (over 50) at this location.

In reply, defendant argues that even if the Court were to disregard the affidavit of defendant's employee, the fact is that plaintiff did not notice any liquid on the floor when he arrived at the laundromat. It contends that the photograph submitted by plaintiff merely shows a person standing in the laundromat and there is no indication when this photograph was taken.

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 a 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]).

"It is a well-established principle that a landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, including the likelihood of injury to third parties, the potential that any such injury would be of a serious nature and the burden of avoiding the risk. In order to recover damages for a breach of this duty, a party must establish that the landlord created, or had actual or constructive notice of the hazardous condition which precipitated the injury. Moreover, in order 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 [the owner's] employees to discover and remedy it" (*Zuk v Great Atl. & Pac. Tea Co.*, Inc., 21 AD3d 275, 275-76, 799 NYS2d 504 [1st Dept 2005] [internal quotations and citations omitted]).

On these papers, the Court denies the motion. Ms. Marte, defendant's witness and former employee, explained in her deposition that she was working on the day of plaintiff's accident and that she didn't remember how many times or when she inspected the floor (NYSCEF Doc. No. 41 at 26). She noted that she would do inspections if someone were to throw something dirty on the floor (*id*.). As plaintiff observes, the affidavit from Ms. Marte submitted on this motion (NYSCEF Doc. No. 35) contains significantly more detail about her inspections and, accordingly, the Court cannot consider it. Suddenly, this witness now asserts that she did not see any liquid on the floor when she conducted an inspection at 7 a.m. (approximately two to three hours before plaintiff fell). Defendant's assertion that this affidavit "merely fills in information not covered during her deposition" is without merit. At her deposition, Ms. Marte was asked what times she inspected the laundromat and she testified that she did not remember.

A jury could conclude that defendant did not conduct any inspections of the laundromat floor for hours prior to plaintiff's slip and fall, and thereby find that defendant had constructive notice of the dangerous condition. The Court recognizes that this laundromat has many machines and that its patrons use the machines. However, that does not mean that defendant has no duty to keep the floor free from liquid (*Andersen v El Triunfo Laundromat Corp.*, 151 AD3d 921, 922 [2d Dept 2017] [finding an issue of fact with respect to a laundromat's constructive notice of a foreign substance on the floor that caused plaintiff to slip and fall]).

Defendant's argument that plaintiff could not recall seeing the blue liquid before his fall does not compel the Court to grant the motion. Certainly, a jury could conclude that the liquid must not have been present on the floor for very long if plaintiff did not see it. Or they could find that plaintiff simply missed it but defendant had a duty to keep the floor dry. Or the jury could conclude something else. In any event, it is a conclusion to be drawn by a jury.

Accordingly, it is hereby

ORDERED that the motion by defendant for summary judgment is denied.

6/2/2021
DATE

ARLENE P. BLUTH, J.S.C.

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