Torres v Sanitation Salvage Corp.
2021 NY Slip Op 33046(U)
November 4, 2021
Supreme Court, Bronx County
Docket Number: Index No. 24285/2018E
Judge: Adrian Armstrong
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 21

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JOSEPHINE TORRES,

Plaintiff,

-against-

DECISION and ORDER
24285/2018E

SANITATION SALVAGE CORP. and THE HUNTS POINT TERMINAL MARKET, INC.,

Defendants.

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Adrian Armstrong, J.

Plaintiff brings this personal injury case against Sanitation Salvage Corp. (hereinafter "Salvage Corp.") and the Hunts Point Terminal Market, Inc. (hereinafter "Hunts Point"). Hunts Point now moves for summary judgment pursuant to CPLR 3212, dismissing the plaintiff's complaint and any cross-claims asserted against it.

Plaintiff seeks damages for injuries she allegedly sustained at the Hunts Point Terminal Market located in the Bronx. Said property is owned by the City of New York and leased by defendant Hunts Point. Hunts Point leases individual units on the property to produce vendors, such as plaintiff's employer, Top Banana. Plaintiff was allegedly injured on July 20, 2017, around 2:00 p.m. or 2:15 p.m. while leaving her office at the end of the day when she descended a ramp at the subject premises to get down to the street-level sidewalk area. Plaintiff contends that she slipped on residue from fruits and vegetables located on the sidewalk at the base of the ramp, which she alleges was the proximate cause of the accident.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact. *Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 487 N.Y.S.2d 316, 476 N.E.2d 642* (1985). Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party. *Jacobsen v. New York City Health & Hosps. Corp., 22 N.Y.3d 824 [2014].*) Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action *(Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]).*

"A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence" (Smith v Costco Wholesale corp., 50 AD3d 499, 500 [1st Dept 2008]). "To meet its burden on the issue of lack of constructive notice, the defendant must offer some evidence as to when the accident site was last cleaned or inspected prior to the plaintiff's fall." (*Mei Xiao Guo v Quong Big Realty Corp.*, 81 AD3d 610, 611 [2d Dept. 2011]). 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." (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). "However, a defendant can make its prima facie showing of entitlement to judgment as a matter of law by

establishing that the plaintiff cannot identify the cause of his or her fall without engaging in speculation" ((*Ash v City of New York*, 109 AD3d 854, 855 [2nd Dept 2013]). "Where it is just as likely that some other factor, such as a misstep or a loss of balance, could have caused a trip and fall accident, any determination by the trier of fact as to causation would be based upon sheer speculation" (*Ash v City of New York,* 109 AD3d at 855).

Here, the defendant established its prima facie entitlement to judgment as a matter of law dismissing the complaint by submitting a transcript of the plaintiff's deposition testimony, which demonstrated that the plaintiff was unable to identify the cause of her fall (*see Giannotti v Hudson Val. Fed. Credit Union*, 133 AD3d 711 [2nd Dept 2015]). The plaintiff testified at her deposition that when she walked down the subject ramp she did not see any fruits or other debris on the sidewalk at the base of the ramp. When she reached the bottom of the ramp, she still did not see any fruits or debris at the location of the incident. About 2-3 feet from the bottom of the ramp, plaintiff claims she slipped on residue from fruits and vegetables located on the sidewalk at the base of the ramp. Plaintiff, however, testified that she did not see any such residue prior to the incident. In fact, she never saw any residue on the ground, even after the accident, only claiming that her clothes were sticky after her fall.

It is uncontradicted that prior to the date of the accident, Hunts Point hired co-defendant Sanitation Salvage to clean the exterior common areas of the Market, including removing any garbage from the location of the incident. Evidence was presented by movant concerning the contractor's cleaning schedule and when the area was last cleaned prior to the accident, which was approximately one hour before the plaintiff's accident. This evidence was corroborated by plaintiff in her

deposition testimony.

In opposition to the motion, contrary to the plaintiff's contention, her deposition testimony failed to present evidence sufficient to raise a triable issue of fact as to the cause of the accident. The mere fact that the plaintiff's clothes were wet after the fall is insufficient to raise a triable issue of fact as to the liability of Hunts Point for the alleged dangerous condition (*see Kuchman v Olympia & York, USA*, 238 AD2d 381, 382 [2nd Dept 1997]), particularly in view of the plaintiff's own testimony that she never actually observed any residue in the area where she fell, or the existence of any prior complaints (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). Evidence of wetness on plaintiff's pants simply does not, in isolation, suffice to support a reasonable inference that the injury was sustained wholly or in part by a cause for which Hunts Point was responsible (*see Bernstein v City of New York*, 69 NY2d 1020, 1022 [1987]).

Even viewing the evidence in the light most favorable to the plaintiff and according her the benefit of all reasonable inferences (*see Giraldo v Twins Ambulette Serv., Inc.*, 96 AD3d 903 [2nd Dept 2012]), her testimony that the cause of her fall was the residue from fruits and vegetables rested entirely on speculation (*see Kloepfer v Aslanis*, 106 AD3d 956 [2nd Dept 2013]). Moreover, in opposition to the defendant's prima facie showing, the affirmation of the plaintiff's attorney was insufficient to raise a triable issue of fact (see CPLR 3212[b]; *Yong Dong Liu v Lowe*, 173 AD3d 946, 947 [2nd Dept 2019]).

Accordingly, it is hereby

ORDERED that the motion of defendant Hunts Point terminal Market, Inc. pursuant to CPLR 3212 for an order granting summary judgment dismissing all claims against it is granted, and all claims and cross-claims against said defendant

are dismissed in its entirety.

This is the Decision and Order of the Court.

Dated: November 4, 2021

Adrian Armstrong, A.J.S.C.

HON. ADRIAN N. ARMSTRONG, J.C.C.